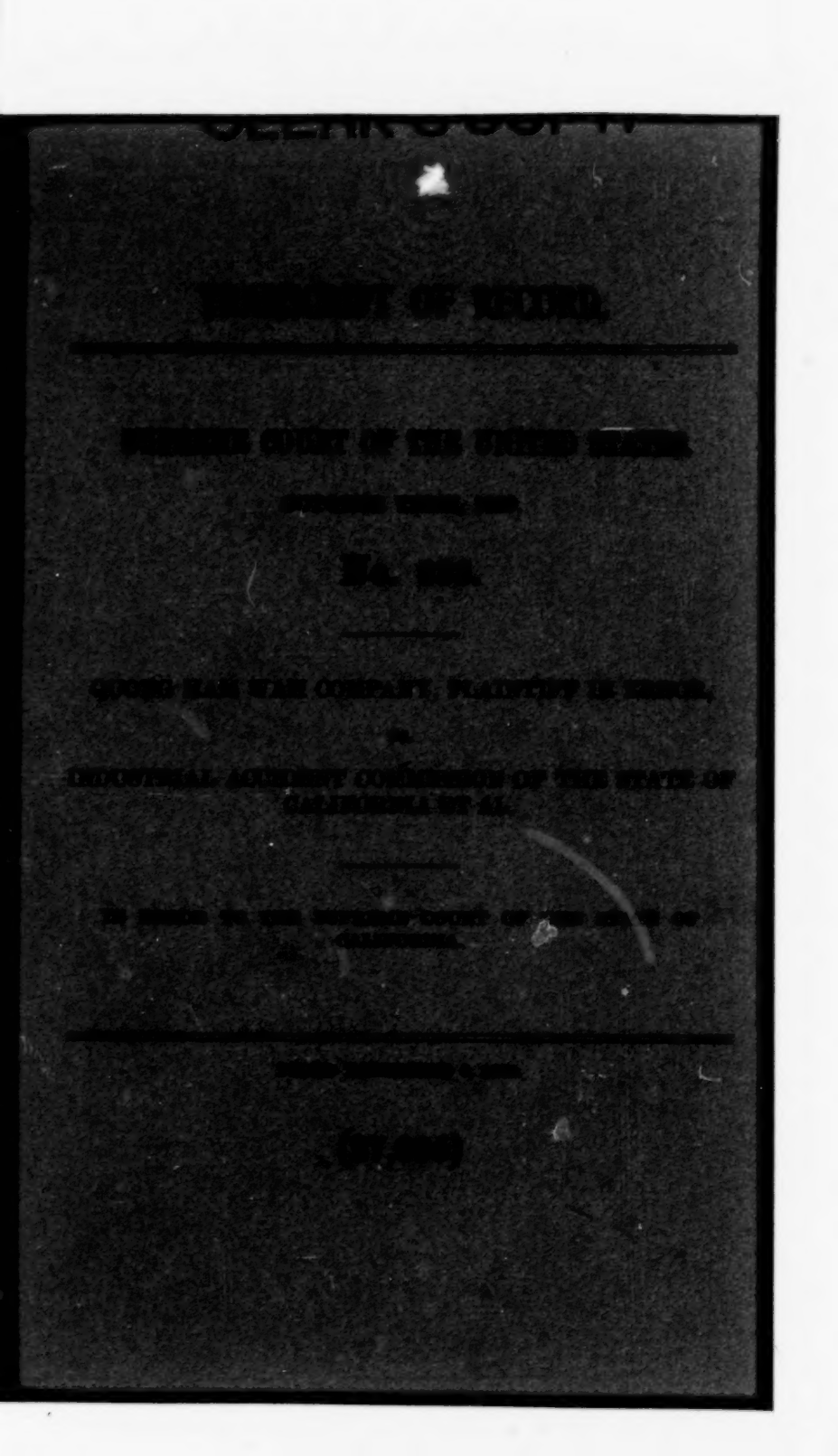

(27,995)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 638.

QUONG HAM WAH COMPANY, PLAINTIFF IN ERROR,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 4, 1921.

1 In the Supreme Court of the State of California.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French, and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Stipulation.

It is hereby stipulated that the following portions of the record herein shall constitute the transcript of record on Writ of Error herein, and that the Clerk of the above-entitled Court shall transmit said portions of said record to the Clerk of the Supreme Court of the United States, to-wit:

(1) Petition to the Supreme Court of the State of California for Writ of Review;

(2) Order of the Supreme Court of the State of California for issuance of Writ of Review;

(3) Writ of Review from the Supreme Court of the State of California;

(4) Stipulation and Return of Industrial Accident Commission;

(5) Judgment of the Supreme Court of the State of California reversing the award of the Industrial Accident Commission of the State of California, and the opinion of said Supreme Court stating the ground of its decision;

(6) Order of the Supreme Court of the State of California granting a rehearing;

(7) Judgment of the Supreme Court of the State of California affirming the award of the Industrial Accident Commission of the State of California, and the opinion of the said Supreme Court stating the grounds of its decision;

(8) Original petition for a Writ of Error, together with all endorsements thereon;

(9) Original Assignment of Errors on said Writ of Error, together with all endorsements thereon;

2 (10) Copy of the order allowing said Writ of Error and fixing supersedeas and cost bond, together with all endorsements thereon;

(11) Copy of the bond on Writ of Error and staying execution, together with all endorsements thereon;

(12) Original Writ of Error, together with all endorsements thereon;

(13) Original Citation, with proof of service thereon and all endorsements thereon;

(14) Certificate of Clerk of the Supreme Court of the State of California.

Dated: November 15th, 1920.

DELGER TROWBRIDGE,
WARREN GREGORY,
Attorneys for Plaintiffs in Error.
A. E. GRAUPNER,
WARREN H. PILLSBURY,
Attorneys for Defendant in Error, Industrial Accident Commission.
JOHN L. McNAB,
BYRON COLEMAN,
Attorneys for Defendant in Error, Owe Ming.
VINCENT I. COMPAGNO,
Attorney for Defendant in Error, Alaska Packers Association.

2 [Endorsed:] S. F. No. 9090. Clerk's Office Copy. Supreme Court of the State of California. Quong Ham Wah Company, Petitioner and Plaintiff in Error, vs. Industrial Accident Commission of the State of California et al., Defendants in Error. Stipulation as to Transcript of Record. Filed Nov. 15, 1920. B. Grant Taylor, Clerk, By E. B., Deputy. Delger Trowbridge, Warren Gregory, Attorneys for Pltff. in Error, Merchants Exchange Bld., San Francisco, Cal.

4 In the Supreme Court of the State of California.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission, and Owe Ming, Respondents.

Petition for Writ of Review.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of California:

Your petitioner, Quong Ham Wah Company, respectfully applies to the above entitled Court for a writ of review for the purpose of having determined the lawfulness of the original order or award of Respondents, A. J. Pillsbury, Will J. French and Meyer S. Lissner as members of and constituting the Industrial Accident Commission of the State of California in the matter before it entitled "Owe Ming, Applicant, vs. Alaska Packers Association and Quong Ham Wah Company, Defendants" and Numbered Claim 6014, and also for the purpose of having determined the lawfulness of all orders of said Respondents in said matter, and in that behalf your petitioner respectfully shows:

5 I.

That petitioner is, and was at the times herein mentioned, engaged in the general merchandise business and also in the business of hiring laborers and furnishing labor to various canneries within and without the State of California, among others to the Alaska Packers Association, a corporation at its Cook's Inlet cannery in the Territory of Alaska.

II.

That at all times herein mentioned A. J. Pillsbury, Will J. French and Meyer S. Lissner were and are the duly appointed, qualified and acting members of the Industrial Accident Commission of the State of California, and that said last named persons constitute and were and are the members herein mentioned, and now constitute and are the Industrial Accident Commission of the State of California.

III.

That on the 11th day of October, 1918, there was presented to and filed with said Commission an application signed by Owe Ming, one

of the Respondents herein named, wherein said applicant set forth that he was injured in Alaska on the 30th day of July, 1918, while he was in petitioner's employ, and that as a result of being injured on the day and year aforesaid he had sustained a permanent disability and wherein he prayed for compensation under the Workmen's Compensation, Insurance and Safety Act of 1917.

IV.

That thereafter, your petitioner herein filed an answer to said application, wherein it denied all liability for the accident set forth in said application.

6

V.

That thereafter, the said application was heard and tried by said Commission.

VI.

That upon said hearing before the Commission the following evidence, briefly stated, was introduced:

That on the 30th day of July, 1918, and at the time of the accident occurring on said date said applicant was a resident of the State of California and was acting under a contract of employment by petitioner made in the State of California; that said applicant was injured while acting in the course of his said employment on said 30th day of July, 1918, at Cook's Inlet, Alaska; and that as a result of said accident he sustained a permanent disability.

VII.

That on the 10th day of March, 1919, said Commission made and filed its findings and award; that said findings and award were signed by all the members of said Commission; that a copy of said findings and award are hereunto annexed, marked Exhibit "A" and made a part hereof; that in said award said Commission awarded Applicant the sum of Four Hundred and Sixty-four and 85/100 Dollars ($464.85).

VIII.

That thereafter, and to-wit: on the 25th day of March, 1919, said petitioner filed with said Commission a verified petition for a rehearing as required by Section 64 of said Act, and duly served a copy thereof on all the adverse parties, including said applicant.

IX.

7 That said petition for a rehearing was based upon the ground that said Commission acted without and in excess of its powers for the particular reasons set out and specified in paragraph XV hereof.

X.

That on April 26th, 1919, said Commission, by a majority of its members denied said application of petitioner for a rehearing.

XI.

That, so far as your petitioner is advised, the only persons or corporations beneficially interested in this proceeding for a review, and the only persons or corporations interested besides your petitioner and the Industrial Accident Commission of the State of California and its members are Owe Ming, the Applicant before said Commission, and Alaska Packers Association, a corporation, which was joined with your petitioner as a Defendant before said Commission.

XII.

That your petitioner has paid no part of the amount of said award.

XIII.

That in and by said Workmen's Compensation, Insurance and Safety Act of 1917 it is provided that upon the application for, or the pendency of, a writ of review, the Court before which such application is filed may, in its discretion, stay or suspend, in whole or in part, the portion of the order, award, rule or regulation of the Commission subject to review upon such terms and conditions as may be ordered, subject also to the filing of a written undertaking by petitioner as subscribed in Section 68, Subdivision C of the aforesaid Act. Said petitioner desires a stay and suspension of said
8 award and order of said Commission pending the hearing and decision of this Honorable Court; that your petitioner is solvent and entirely responsible for the amount of said award, and petitioner prays that a stay and suspension of said award and order be granted on condition that petitioner file a written undertaking required by Section 68, Subdivision C of said Act.

XIV.

That said petitioner applies for this writ of review upon the ground that said Industrial Accident Commission, exercising judicial functions, has exceeded its jurisdiction and has not regularly pursued its authority, and that there is neither an appeal nor any plain, speedy or adequate remedy for such excess of jurisdiction or such irregular pursuit of authority. The reason the application is made originally to this Court is that petitioner is by said Act given the option of applying to this Court.

XV.

That said petitioner applies for this writ of review upon the ground that said Commission acted without authority and in excess of its

powers and jurisdiction in the matter of said application, and in the making of said order and award for the following reasons:

1. Because the said injury of said applicant, Owe Ming, occurred outside of the territorial limits of the State of California, to-wit: at Cook's Inlet, in the Territory of Alaska.

2. Because said Commission is without jurisdiction to award compensation for injuries or death occurring outside of the territorial limits of the State of California, except for the provisions of Section 58 of the Workmen's Compensation Insurance and Safety Act of 1917, and said Section 58 of said Act is void for the following reasons:

9 (*a*) Because in attempting to give the right to compensation and death benefits for injuries occurring without the territorial limits of the State of California in cases where the contract of employment is made in the State of California and the injured employee is a resident of the State of California, but withholding a like right of compensation where the injured employee under such conditions is a non-resident of the State of California, the said Section 58 violates Article IV, Section 2, paragraph 1 of the Constitution of the United States in that it grants a privilege to citizens of the State of California which it denies to the citizens of other States of the Union.

(*b*) Because in attempting to give the right to compensation and death benefits for injuries occurring without the territorial limits of the State of Cailfornia in those cases where the contract of employment is made in the State of California and the injured employee is a resident of the State of California, but withholding a like right of compensation and death benefits where the injured employee under such conditions is a non-resident of the State of California, the said Section 58 violates Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it denies to persons who are not residents of the State of California the equal protection of the laws with persons who are residents of the State of California; that is to say, Section 58 of said Act grants unto residents of the State of California, injured without the territorial limits thereof, the right to compensation under said Act, and unto the dependents of such persons the right to death benefits under said Act, whereas, without any just or reasonable basis for dis-
10 crimination, Section 59 of said Act denies unto persons, other than residents of the State of California, such right of compensation, and unto the dependents of persons other than residents of the State of California, the right to such death benefits.

(*c*) Because said Section 58 of the Workmen's Compensation, Insurance and Safety Act of the State of California is violative of Article IV, Section 1 of the Constitution of the United States in that it fails to give full faith and credit to the public acts, records and judicial proceedings of other states of the Union in this; that whereas Section 58 provides that residents of California injured in

another state of the Union may recover compensation for such injuries under said Act, and that the dependents of residents of California injured in other states of the Union may recover death benefits on account of such injuries, nevertheless it is expressly provided in said Act that wherever the right to compensation or death benefits shall exist under the terms of said Act, such right shall be in lieu of any other liability whatsoever, and such remedy shall be the exclusive remedy against the employer for such injury or death.

Wherefore, petitioner prays:

1. That pending the review herein petitioned for, this Court under the provisions of Section 68 of said Workmen's Compensation, Insurance and Safety Act of 1917, stay and suspend the operation of the award sought to be reviewed herein.

2. That a writ of review issue out of this Court commanding the Industrial Accident Commission of the State of California and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as members of and constituting said Commission, and each of them, the Respondents herein, to supply fully to this Court at a satisfactory time
11 and place a transcript of the records and proceedings in the matter of said application and claim of Owe Ming, bearing No. 6014 of the records of said Commission in order that the same may be reviewed by this Court and that, upon such review, said order or award of said Commission may be annulled and adjudged void and of no effect; and, further, commanding said Industrial Accident Commission and its members, and each of them, in the meanwhile to desist from further proceedings in the matter to be reviewed; and for such other and further relief as may be meet and equitable in the premises.

QUONG HAM WAH COMPANY,
By LEM SEN,
Manager.

GORRILL & TROWBRIDGE,
DELGER TROWBRIDGE,
Attorneys for Petitioner.

12 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Lem Sen, being first duly sworn, deposes and says:

That he is the Manager of Quong Ham Wah Company, petitioner in the above entitled matter; that he makes this verification on behalf of said petitioner; that he has read the foregoing petition for writ of review and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and, as to those matters, he believes it to be true.

LEM SEN.

Subscribed and sworn to before me this 5th day of May, A. D. 1919.

[SEAL.] HENRIETTA HARPER.
Notary Public in and for the City and County of San Francisco, State of California.

13 EXHIBIT "A."

Copy.

Filed Mar. 10, 1919.

Before the Industrial Accident Commission of the State of California.

Claim No. 6014.

OWE MING, Applicant,

vs.

ALASKA PACKERS ASSOCIATION and QUONG HAM WAH CO., Defendants.

Findings and Award.

This cause came on for decision by the Industrial Accident Commission of the State of California at its office at 525 Market Street, San Francisco, California, on Monday, the 24th day of February, 1918, at 10 o'clock a. m.

Said decision was rendered upon testimony and stipulations taken at preliminary hearings held at said office on the 7th day of November, 1918, at 2 o'clock p. m., by Duncan McPherson, Jr., Referee, and on the 14th and 21st days of November, 1918, at 2 o'clock p. m., by L. C. Brown, Referee.

At each of said preliminary hearings, the applicant, Owe Ming, was represented by John L. McNab and Byron Coleman, attorneys-at-law. Defendant Alaska Packers Association was represented by Chickering & Gregory, attorneys-at-law, Mr. A. C. Van Fleet appearing. Defendant Quong Ham Wah Co. was represented by Delger Trowbridge, attorney-at-law.

The cause having been submitted for decision, this Commission makes its Findings and Award as follows:

Findings of Fact.

1. That Owe Ming, hereinafter called the employee, the applicant herein, was injured on the 30th day of July, 1918, at Cook's
14 Inlet, Alaska, while in the employment of defendant Quong Ham Wah Co., hereinafter called the employer, as a machine tender. That at said time said employee was a resident of, and his contract of hire was made within, the State of California.

2. That said injury arose out of and in the course of such employment, was proximately caused thereby, and occurred while the employee was performing service growing out of and incidental to the same, and happened in the following manner: While cleaning an oil hole on a machine he was tending his minor hand was caught and injured, necessitating the amputation of part of the thumb and index finger.

3. That at the time of said injury the employee was not engaged in any of the occupations or employments excluded by Section 8 of the Workmen's Compensation, Insurance and Safety Act of 1917 from the provisions of said Act.

4. That the employer had knowledge of the said injury as defined by Section 15 of said Act.

5. That the medical, surgical and hospital treatment required to cure and relieve the employee from the effects of said injury was provided by the defendant Alaska Packers Association.

6. That the monthly earnings of the employee at the time of said injury were seventy-two dollars and fifty cents ($72.50). That the average weekly earnings were fifteen dollars and ninety cents ($15.90); and 65 per cent thereof is ten dollars and thirty-three cents ($10.33).

7. That at the time of said injury the occupation of the employee was that of machine tender and his age thirty-two years. That by reason of said injury he suffered a permanent partial disability consisting of amputation of the index finger near the second joint and the thumb near the distal joint, of the minor hand and equaling 11¼ per cent of total disability, and entitling him to a disability indemnity of ten dollars and thirty-three cents ($10.33) per week for a period of forty-five weeks from the eleventh day after said injury (August 10, 1918), amounting to the total sum of four hundred sixty-four dollars and eighty-five cents ($464.85); and that the amount of such indemnity accrued and payable for the period of thirty weeks up to and including the 8th day of March, 1919, equals the sum of three hundred nine dollars and ninety cents ($309.90).

8. That John L. McNab and Byron Coleman have rendered services in this proceeding, as attorneys for the applicant, of the reasonable value of fifty dollars ($50.00), and are entitled to a fee payable by the applicant in said amount.

9. That said employer was not insured against liability under said Act. That defendant Alaska Packers Association, hereinafter called the association, had undertaken with defendant Quong Ham Wah Co. to have executed the work upon which said employee was engaged at the time of said injury, upon premises which were at that time under the control and management of said association, and said injury occurred on such premises. That said association was

therefore at the time of said injury the principal employer of said employee, and is liable to him, as such, for said injury.

10. That applicant's conduct in cleaning said oil hole in the manner in which he did it, was negligent but was not in violation of any rule or regulation of said employer or principal employer, and was not serious and wilful misconduct under the terms of said Act.

11. That the service and wages of said employee commenced when he placed himself at the disposal of said employer on the vessel, at San Francisco, California. That said contract of hire was therefore in part performed in the State of California, and under the provisions of Section 1646 of the Civil Code, may be interpreted according to the law of this state.

12. That there is no law in the Territory of Alaska providing compensation, irrespective of negligence on the part of the employer, for injuries to employees. That applicant's injury hereinabove described was not caused by negligence on the part of said employer, and applicant's only remedy is therefore under the laws of the State of California.

13. That defendant association is not deprived by the provisions of Section 58 of the Workmen's Compensation, Insurance and Safety Act of 1917, of any privilege or immunity in violation of Section 2 of Article IV of the Constitution of the United States. That said Section 58 does not abridge any privilege or immunity of said association as a citizen of the United States, nor deprive said association of life, liberty or property without due process of law, nor deny to said association the equal protection of the laws. That, therefore, under the decision of the Supreme Court of this State in the case of Schillinsky vs. Steamer "Bandon," et al., (55 Cal. Dec. 521, 5 I. A. C. Dec. (Cal.) 65), said defendant cannot contest the constitutionality of said Section 58.

14. That Section 25 of the Workmen's Compensation, Insurance and Safety Act of 1917, giving to this Commission jurisdiction to determine controversies arising under said section, is adequately sustained by the provisions of Section 17½ of Article XX of the Constitution of the State of California. That it is not in violation of Section 21 of said article, and any want of authorization in said Section 21 for said grant of jurisdiction, is supplied by said Section 17½.

15. That said Workmen's Compensation, Insurance and Safety Act was enacted before the contracts between said association and said employer and between said employer and employee were entered into and therefore cannot impair the obligation thereof in violation of Section 10 of Article I of the Constitution of the United States.

Award.

Now therefore, in conformity with the foregoing Findings,

Award is hereby made in favor of Owe Ming, the applicant herein, against Quong Ham Wah Co. and Alaska Packers' Association, the defendants herein, and each of them, of the sum of four hundred sixty-four dollars and eighty-five cents ($464.85), payment thereof to said applicant to be as follows:

1. Cash in hand the sum of three hundred nine dollars and ninety cents ($309.90), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 7th day of March, 1919; less, however, the sum of fifty dollars ($50.00) to be deducted therefrom and paid to John L. McNab and Byron Coleman as a fee, as attorneys for the applicant herein.

2. The further sum of ten dollars and thirty-three cents ($10.33) a week, payable weekly in advance beginning with the 8th day of March, 1919, for the period of fifteen consecutive weeks, thus completing the payment of said total sum of four hundred sixty-four dollars and eighty-five cents ($464.85), and

It is further ordered that execution shall not be levied upon or issued against the property of defendant Alaska Packers Association unless, and until, execution against the property of defendant Quong Ham Wah Co. shall have been returned unsatisfied in whole or in part.

Dated at San Francisco, California, this 10th day of March, 1919.

[SEAL.] INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
A. J. PILLSBURY,
WILL J. FRENCH,
MEYER LISSNER,
Commissioners.

Attest:
H. L. WHITE,
Secretary.

L. C. B.:E. B. P.

18 [Endorsed:] S. F. No. 9090. In the Supreme Court of the State of California. Quong Ham Wah Company, plaintiff, vs. Industrial Accident Commission of the State of California et al., respondents. Petition for writ of review. Filed May 8, 1919. B. Grant Taylor, clerk, by Erb, deputy. Gorrill & Trowbridge, attorneys for petitioner, 948 Mills Building, San Francisco.

19 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming and Alaska Packers Association, a Corporation, Respondents.

Order for Issuance of Writ of Review.

By the Court:

Ordered that a writ of review issue as prayed for in the within petition, returnable before the court, at its courtroom in San Francisco, on Monday June 2, 1919, at 10 o'clock a. m.

Further ordered that in addition to the service required by law copies of the within petition and of this order be served on Owe Ming and the Alaska Packers Association, named herein as parties interested, at least 10 days before said June 2, 1919.

ANGELLOTTI,
C. J.

Dated: May 12, 1919.

[Endorsed:] Filed May 12, 1919. B. Grant Taylor, clerk, by Erb, deputy.

20 [Endorsed:] S. F. No. 9090. In the Supreme Court of the State of California. Quong Ham Wah Company, petitioner, vs. Industrial Accident Commission of the State of California et al., respondents. Order for issuance of writ of review. Filed Nov. 8, 1920. B. Grant Taylor, clerk, by M., deputy. Delger Trowbridge, Warren Gregory, attorneys for petitioner, Merchants Exchange Bldg., San Francisco, Cal.

21 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French, and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming and Alaska Packers Association, a Corporation, Respondents.

Writ of Review.

The People of the State of California to Industrial Accident Commission of the State of California, and A. J. Pillsbury, Will J. French, and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming and Alaska Packers Association, a Corporation:

Whereas it has been represented to the above entitled Court by the verified petition of the above named petitioner that lately before the Respondents, Industrial Accident Commission of the State of California and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as members of and constituting said Commission, such proceedings were had that the said respondents irregularly and without authority or jurisdiction in the premises made an order or award to the respondent Owe Ming in the proceeding wherein said Owe Ming was applicant and the above named petitioner and respondent Alaska Packers Association, a corporation, were defendants Numbered 6014 in the records of said Commission; and this Court being willing that the said proceedings of the said respondents Industrial Accident Commission of the State of California, and A. J. Pillsbury, Will J. French and Meyer S. Lissner as members of and constituting said Commission, in the premises and pertaining thereto shall be certified and returned by them unto this Court in the Court-room of said Court in the Wells Fargo Building, corner of Second and Mission Streets in the City and County of San Francisco, State of California on Monday, June 2, 1919, at 10 o'clock A. M.

22

The respondents Industrial Accident Commission of the State of California and A. J. Pillsbury, Will J. French and Meyer S. Lissner as members of and constituting said Commission, are hereby commanded to certify and return unto this Court at said time and place all the proceedings concerning the said order or award taken before them, or occurring before them, so that this Court may further act thereon as of right and according to law ought to be done and that they have then and there with them this writ.

Witness the Honorable F. M. Angellotti, Chief Justice of the Supreme Court of the State of California this 14th day of May, 1919.

B. GRANT TAYLOR,
Clerk,

[SEAL.] By W. R. MACKRILLE,
Deputy Clerk.

23 Receipt of a copy of the within writ, of the order for the issuance of the same, and of the petition for the same is hereby admitted this 14th day of May, 1919.

A. E. GRAUPNER,
Attorney for Respondents,
Ind. Acc. Com. and Its Members.
JOHN L. McNAB &
BYRON COLEMAN,
Attorneys for Applicant, Owe Ming.
CHICKERING & GREGORY,
Attys. for Alaska Packers.

[Endorsed:] S. F. No. 9090. In the Supreme Court of the State of California. Quong Ham Wah Company, Petitioner, vs. Industrial Accident Commission of the State of California et al., Respondents. Writ of Review. Endorsed. Filed May 15, 1919. B. Grant Taylor, Clerk, by Erb, Deputy. Delger Trowbridge and Warren Gregory, Attys. for Petitioner, Merchants Exchange Bldg., San Francisco, Cal.

24 In the Supreme Court of the State of California.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA et al., Respondents.

Stipulation.

It is stipulated by and between counsel for petitioner and counsel for respondents as follows:

I.

That the Findings and Award of the respondent Industrial Accident Commission, as set forth in the petition for writ of review, may constitute the return of the Industrial Accident Commission.

II.

That this matter may be submitted upon briefs, petitioner to have thirty days to file opening brief, respondents thirty days for answering brief, and petitioner fifteen days to reply thereto.

GORRILL & TROWBRIDGE,
DELGER TROWBRIDGE,
Counsel for Petitioner.
CHICKERING & GREGORY,
Counsel for Respondent, Alaska Packers Association.
A. E. GRAUPNER,
Counsel for Respondent, Industrial Accident Commission and Its Members.
JOHN L. McNAB &
BYRON COLEMAN,
Attys. for Respondent, Owe Ming.

So Ordered:

——— ———,
Chief Justice.

Dated June 2, 1919, at San Francisco, California.

Filed 6/2/19.

25 [Endorsed:] No. 9090. In the Supreme Court of the State of California. Quong Ham Wah Company, Petitioner, vs. Industrial Accident Commission of the State of California et al., Respondents. Stipulation. Filed June 2, 1919. B. Grant Taylor. Delger Trowbridge, Warren Gregory, Attys. for Petitioner, Merchants Exchange Bldg., San Francisco, Cal.

26 Filed Dec. 26, 1919. B. Grant Taylor, Clerk. By Dryden, Deputy.

In the Supreme Court of the State of California.

In Bank.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting Said Commission, and Owe Ming and Alaska Packers Association, a Corporation, Respondents.

Certiorari to review the action of the Industrial Accident Commission in making an award pursuant to the terms of section 58 of the Workmen's Compensation Act as amended in 1917:

Section 58 reads as follows: "The commission shall have jurisdiction over all controversies arising out of injuries suffered
27 without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act." (Stats. 1917, page 870.)

Petitioner, the employer of the injured workman, attacks the validity of this statute on the ground that it violates section 2 of article IV of the constitution of the United States which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states." The first question presented is whether or not petitioner is in a position to attack the constitutionality of the statute.

The provision of the Workmen's Compensation Act now under attack is identical in phraseology with that considered by this court in Estabrook v. Ind. Acc. Com., 177 Cal. 767. It was held in that case that the employer was not in a position to question the constitutionality of the statute. The court relied upon the general rule that a contention that a statute makes an unlawful discrimination between persons or classes of persons may not be raised by one not belonging to the class alleged to be discriminated against. This general rule is not an arbitrary one, but is based upon considerations of policy and convenience and is subject to certain well established exceptions. The petitioner has, we think, brought itself within one or more of those exceptions. We are, therefore, constrained to overrule the case of Estabrook v. Ind. Acc. Com., supra.

Where no member of a class alleged to unlawfully discriminated
against by a statute is in a position to raise the constitutional
28 question, then any person affected by the application of the statute can urge its unconstitutionality. In Green v. State, 119 N. W. [Neb.] 6, the plaintiff in error was convicted under a statute making it a penal offense to commit "blackmail" against citizens or residents of the state of Nebraska. On appeal he urged that the statute was unconstitutional by reason of the fact that it operated to protect only citizens and residents of the state of Nebraska and therefore unlawfully discriminated against the citizens and residents of all other states. In upholding this contention, the court said: "We have not overlooked those cases which hold that a court will not listen to an objection made to the constitutionality of an act by a party whose right it does not affect, and who has therefore no interest in defeating it. Where the constitutional objection is that the penalties of the law are directed against a certain class without just reason for such discrimination, it is safe to leave the question of the constitutionality of such laws to be raised by the parties against whom the discrimination is made; and such have been the facts in all the cases we have examined laying down this rule. It is inapplicable to a case where the vice of the law consists in an unwarranted discrimination between the individuals against whom the aggression

thereby forbidden is committed. In such cases there is no way by which any person within the jurisdiction of the state denied the protection of its criminal law could bring the question before a court for its determination. If the legislature should enact a law amending our Criminal Code so that the crimes therein specified should be crimes only when committed against citizens or residents of the state, such an act would be absolutely void, but its invalidity could never be brought before the court by any person belonging to the classes thereby denied the protection of the criminal law. If we apply to such a law the rule that its constitutionality would only be considered when the objection was made by a party discriminated against, there could be no objection of its validity. When such a law is sought to be enforced against any person, whether belonging to the classes discriminated against or not, it should be declared void."

While it is true that the language above quoted was used in a criminal case, the decision was not placed upon the grounds of an exception peculiar to cases involving life or liberty. An unconstitutional law is a nullity. It is no law. It would be most manifestly contrary to every consideration of policy and reason for a court to recognize that a given enactment is absolutely void and at the same time to place itself in a position where it must for all time uphold as valid the rights and obligations purported to be created by the enactment by reason of the fact that no member of the class discriminated against could ever have standing in the court to raise the constitutional question. In the instant case the Compensation Act does not give the commission jurisdiction over controversies arising out of injuries sustained abroad by workmen who are not residents of California. It is clear, therefore, that a nonresident would have no standing before the commission or before any court to make a claim under the act. And, not having jurisdiction over his injury, neither the commission nor the courts could entertain or adjudicate his claim for compensation nor the constitutional question involved. Since, therefore, no member of the class discriminated against can ever raise the constitutional question, we are of the opinion that the petitioner is entitled to assail the constitutionality of the statute because its rights are directly affected thereby.

Moreover, aside from the consideration that no member of the class discriminated against can raise the constitutional question, the fact that the rights of petitioner are directly affected in the present proceeding standing alone entitles it to assail the statute. This proposition is established by the case of Buchanan v. Warley, 245 U. S. 60, which, by the way, was decided several years later than Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, which was relied upon in the Estabrook case, supra. In Buchanan v. Warley a vendor of land sued to compel the vendee, a colored person, to receive and pay for a certain parcel of land which he had agreed to buy. Defendant had judgment in the lower courts solely because of the effect of an ordinance making it illegal for colored persons to occupy the

land in question. Plaintiff contended that the ordinance was unconstitutional for the reason that persons of color were unlawfully discriminated against. His right to assail the statute on the ground stated was questioned on the theory that he was not a member of the class discriminated against. In disposing of this contention the court said: "The right of the plaintiff in error to sell his property was directly involved and necessarily impaired because it was held in effect that he could not sell the lot to a person of color who was willing and ready to acquire the property, and had obligated himself to take it. This case does not come within the class wherein this court has held that where one seeks to avoid the enforcement of a law or ordinance he must present a grievance of his own
31 and not rest the attack upon the alleged violation of another's rights. In this case the property rights of the plaintiff in error are directly and necessarily involved." Respondent suggests that the reasoning of this case must be confined to those situations where an unconstitutional enactment interferes with an affirmative right of one not discriminated against and that it should not be extended to a case where the enactment merely creates a liability against such a person. There is no merit in the suggestion. An unconstitutional enactment which deprives a person of his property violates his rights and gives him a grievance of his own in the same sense and with the same effect as an enactment which interferes with the affirmative right to alienate his property such as that involved in Buchanan v. Warley, supra. In both cases the property rights of the individual are directly and necessarily involved. The liability which it is sought to have imposed upon the petitioner in the instant case amounts to several hundred dollars. Its property rights are invaded as tangibly and substantially, we think, as are those of an individual whose right to sell his property is incidentally affected by an ordinance forbidding colored persons to personally occupy the property in question.

Our conclusion is further fortified by the recent decision of the United States Supreme Court in Middleton v. Texas Power & Light Co., reported in 39 Supreme Court Reporter, 227. In that case a workman was seeking to recover at common law for injuries sustained in an industrial accident. He attacked the constitutionality of the Texas Compensation Act on the ground that it unlawfully discriminated against certain classes of workmen. He was not a member of any class claimed to be discriminated against. The court held that while he could not be heard to raise the question of the statute in reliance on the grievance of other persons,
32 nevertheless, as a member of a class to which the act was made to apply he had a grievance of his own if he was deprived of his common law rights by legislation void by reason of the discrimination charged. The court thereupon undertook to consider on its merits the claim that the act was unconstitutional thus indicating that it regarded as a fundamental fact what it had expressly stated, namely that plaintiff had a grievance of his own and was, therefore, entitled to raise the constitutional question and that the court was consequently bound to consider it. The Middle-

ton case is thus "on all fours" with the instant case. Petitioner herein does not rely upon the grievances of other persons in making its attack on the constitutionality of the California statute. As a member of a class to which the act is made to apply it has a grievance of its own if it is deprived of defenses otherwise valid and subsisting by legislation void by reason of discrimination against citizens of other states. The act does of course deprive it of the otherwise valid defense afforded by the fact that the applicant's injury was occasioned solely by his own negligence. The act, therefore, purports to impose a new liability and consequently does directly affect the property and rights of petitioner. If, as was held in the Middleton case, an employee deprived by the statute of his otherwise subsisting right to sue is so directly affected that he may raise the constitutional question, it necessarily follows that an employer deprived by the statute of his otherwise subsisting defenses is likewise interested to a similar extent and with like effect.

But independently of the foregoing considerations, petitioner is entitled to raise the constitutional question in this case. Apart from the statute here involved, the Industrial Accident Commission is wholly without power to hear and determine a cause wherein the injury is alleged to have occurred beyond the borders of the state, and this court is equally without jurisdiction to affirm any award which the commission may undertake to make in any such
33 case. Where the jurisdiction of the court depends upon the validity of the act, any person interested in the decision may raise the question of its unconstitutionality. The rule is stated by the Supreme Judicial Court of Massachusetts as follows: "In the first of the cases before us, a gentleman of the bar appeared as amicus curiæ, by leave of the court, representing parties interested in the decision that might be made upon the construction and effect of the statute, and presented a brief suggesting that the section under which the petitions are brought is unconstitutional. The parties who invoke the aid of the court are precluded from making this contention (Pitkin v. Springfield, 112 Mass., 509), and the respondent does not desire to make it. It is a general rule that the court will not consider the constitutionality of a statute upon an objection made by persons whose rights are not affected by it, and usually the parties to the suit are the only ones who are permitted to raise such a question. But where, as in this case, the jurisdiction of the court depends entirely upon the validity of the act, and the attention of the court is brought to that fact by persons interested in the effect to be given to the statute, although not interested in the case before the court, we deem it our duty to consider whether we have jurisdiction, before taking affirmative action. Action of a court that has no jurisdiction is void; Belcher v. Sheehan, 171 Mass. 513, 68 Am. St. Rep. 445." (New York Life Ins. Co. v. Harrison, 85 N. E. [Mass.] 410.) For like reasons we deem it our duty to consider the question of the constitutionality of section 58 of the Workmen's Compensation Act.

We may assume, without undertaking to decide the point, that the legislature has power to enact a statute requiring employers to

34 compensate employees whose services were engaged in this state for injuries sustained in foreign territory. If, however, the legislature may give such extra territorial effect to the Workmen's Compensation Act, it can only be upon the theory that the obligation to compensate the injured employee sounds in contract and amounts to a sort of compulsory insurance. No principle of private international law is better established or more fundamentally sound than that the lex fori will not undertake to enforce an obligation in tort where the obligation was not created by the lex loci delicti. (Wharton, Conflict of Laws, 3rd ed., secs. 478*a*, 478*b*, and cases cited. Compare also Carr v. Fracis [1902] A. C. 176; Beacham v. Portsmouth Bridge, 68 N. H. 382; Leazotte v. B. & M. R. Co., 45 Atl. [N. H.] 1084; Turner v. St. Clair Tunnel Co., 70 N. W. [Mich.] 146; Hovis v. Richmond etc., Co., 16 S. E. [Ga.] 211.)

It is at once apparent that the legislature has equal power to provide for the creation of a compulsory obligation to compensate for injury suffered elsewhere as an incident to a contract of employment entered into in California whether the contracting employee be a citizen of this state or not. If therefore, the right is created only in favor of citizens of the state, there is discrimination against citizens of sister states.

Section 58 of the Workmen's compensation, Insurance and Safety Act of 1917 restricts the right to claim the benefit of the act in the case of injuries suffered abroad to employees who are residents of California at the time of the injury. It is not open to the slightest doubt that by the word "resident" the legislature intended to designate one domiciled within the state. Citizens of the United States who are domiciled in this state are citizens of the state.
35 (Pol. Code, sec. 51.) It follows that the right to compensation for injury suffered abroad is created only in favor of citizens of this state and in favor of non-citizens of the United States who chance to be domiciled in this state at the time of the injury. There is therefore a direct discrimination against aliens not domiciled in California, with which we are not concerned, and against citizens of other states of the union which, if it is without legal justificiation, renders the statute unconstitutional.

The right of the legislature to enact reasonable regulations governing the creation of contractual liability is unquestioned. When, however, the legislature attempts to provide that a substantial privilege shall be incident to certain contracts of employment when entered into in this state by citizens of this state and that that privilege shall not be incident to identical contracts of employment when entered into in this state by citizens of other states of our union, the enactment is clearly violative of section 2 of article IV of the federal constitution. Different states may have different policies, and the same state may have different policies at different times. But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to bring actions in the courts are given to

its own citizens and withheld from the citizens of other states is void, because in conflict with the supreme law of the land." (Chambers v. B. & O. R. Co., 207 U. S. 142.) It is true that many procedural discriminations between citizens and non-citizens have been upheld, but the rule applied in such situations has no
36 application where a substantial substantive right is granted to citizens and under like circumstances is denied to citizens of other states. The statute here in question provides for the creation within this state of a right to accident insurance as an incident to certain contracts of employment in favor of citizens and opens the doors of its courts and commissions to citizens to enable them to enforce that right. This right is not accorded to citizens of other states. A privilege and protection of the laws of a substantial nature is thereby accorded to citizens of this state and denied to citizens of other states. This is forbidden by the federal consitution. (Blake v. McLung, 172 U. S. 239.)

The constitution provides that "The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states." The provision appears without qualification. Its effect is not limited to those cases where its operation will not interfere with the internal policy of the state or with considerations which appear to affect the general welfare. Its mandate is absolute. It is true that a state may limit the right of individuals to engage in certain professions or callings in the valid exercise of its police power. Such regulations will be upheld even though their effect is indirectly to place non-citizens at a disadvantage, but citizenship must not be made directly the basis of classification, and the regulation must be inherently reasonable. (Ex parte Spinney, 10 Nev. 323; La Tourette v. McMaster, 39 Supreme Court Reporter 160.) The principles applied in these cases cannot be invoked under the facts presented here. By reason of the fact that the distinction drawn by the statute between residents and non-residents is, as we have shown, capable of construction only as a distinction between citizens and non-
37 citizens, the discrimination in the instant case is based directly upon citizenship, and, therefore, independently of the reasonableness of the classification, the statute is violative of the constitution. But no reasonable ground can be found for the classification. Respondent makes the contention that the court should uphold the right of the state to require compulsory compensation for its citizens alone inasmuch as it is only citizens or their families who are likely to become a public charge upon the state as a result of injuries sustained abroad. The argument expresses a very excellent reason for requiring compulsory compensation for citizens, but it expresses no reason at all for denying the same right to citizens of other states. In the cases of which Ex Parte Spinney and La Tourette v. McMaster, supra, are examples, restraints upon engaging in certain occupations which bore more heavily upon citizens of other states were upheld upon the ground that the public good required that the occupations in question be opened only to those having had business or professional experience within the state, the general safety and welfare necessitating the exclusion of others. In none of these

cases was the rule sanctioned that a privilege could be granted to a citizen of one state and denied to citizens of other states for the reason that public policy did not require that the privilege be extended to the latter class of persons. Such a rule would be manifestly unsound and altogether in conflict with the constitutional provision here in question. No consideration of public policy requires that citizens of sister states be excluded from the benefits of the act here under consideration. The fact that considerations of public policy do not affirmatively require the extension of the benefits in
38 question to citizens of sister states as strongly as they require their extension to citizens of this state furnishes absolutely no sound reason for the exclusion of the former and affords no reasonable basis for the discrimination.

It follows that section 58 of the Workmen's Compensation Act is unconstitutional.

The award is annulled.

LENNON, *J.*

We concur:
OLNEY, *J.*
SHAW, *J.*
LAWLOR, *J.*

39 *Dissenting Opinion.*

I dissent.

In March, 1918, this court by unanimous decision in bank, decided the identical point raised here. (Estabrook v. Ind. Acc. Comm.; Klamath Steamship Co. v. Ind. Acc. Comm. 177 Cal. 767.) It is now proposed to squarely overrule that decision on the theory that in rendering it certain exceptions to the general rule relied upon were overlooked, and that the federal case therein particularly relied upon (Jeffrey v. Blagg, 235 U. S. 571) also overlooked these exceptions, and that a subsequent decision by the supreme court of the United States (Buchanan v. Warley, 245 U. S. 60) was based upon and recognized one of these exceptions, and to that extent modified the previous decision of the supreme court of the United States relied upon in the case of Estabrook v. Ind. Acc. Comm., supra. The general rule recognized in Estabrook v. Industrial Acc. Comm., and in the cases therein relied upon as authority for that decision, is that where the statute is complained of as being unconstitutional by reason of discrimination against a certain class, that persons other than members of that class cannot complain of the unconstitutionality of the law for the reason that they are not hurt by the discrimination, and not for the reason that the person raising the question is not interested in or affected by the statute claimed to be unconstitutional. Of course if it be said that every unconstitutional law is void and that every person affected thereby is therefore affected by void legislation, then it would be true that any person whose conduct is regulated by the statute would be to that extent entitled to complain of such invalidity. But this course of reasoning the supreme court of the United States has refused to follow, for the reason that the funda-

mental purpose of the fourteenth amendment to the constitution of the United States was to protect against discrimination, and it
40 was therefore held that only those discriminated against could raise the question. The substantial effect of this line of decisions is that a law, although unconstitutional as to one class by reason of discrimination against that class, can be enforced as to all others, and in all cases except where the rights of those discriminated against are involved. A similar rule applies generally to constitutional questions. As was said by the supreme court of the United States in Hatch v. Reardon, 204 U. S. 152, 160: "But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a State on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all." It is said that one of the exceptions to the rule stated is: "Where no member of a class alleged to be unlawfully discriminated against by a statute is in a position to raise the constitutional question, then any person affected by the application of the statute can urge its unconstitutionality." This certainly is a strange doctrine—that a law is valid as to all classes except the class discriminated against, unless that class is precluded from making complaint, in which event the law is invalid as to every class. Such an exception overlooks the purpose of the rule, namely, to confine the complaint against such legislation to those who are injured by it, in the sense that they are deprived of a constitutional right to equal treatment. No decision of the United States Supreme Court called to our attention recognizes such an exception to the general rule.

41 It is next held that there is an exception to the rule where the rights of the party raising the question of the constitutionality of the law are directly affected by the law. On this point Buchanan v. Warley, supra, is cited as an evidence of this exception to the rule, and it is upon this theory that the majority of the court places its decision that the employer can complain that certain classes of employees are discriminated against. It should be noted that if this is an exception to the rule, then the exception is as broad as the rule, and if any such exception is established it practically overrules all those decisions maintaining and enforcing the rule that only those discriminated against can raise the constitutional question, for the exception is in effect that any one injuriously affected by a decision that the law is constitutional can claim it is unconstitutional, even though not in the class discriminated against. In other words, any one can claim the statute to be void if such a conclusion is to his advantage. An examination of the case of Buchanan v. Warley shows that the facts there involved are so different from those requiring the application of the rule under discussion, that the

rule was neither mentioned nor discussed. There a white man had sold real estate to a colored man, and in the contract it was provided that the latter would not be required to complete the purchase unless he was by law authorized to use the land purchased for a residence. The right of the plaintiff, although a white man, turned then upon the constitutionality of the ordinance, which in effect prohibited him from selling the land to a colored man for residence purposes. This invaded his right to dispose of his property. Although the colored man was seeking to sustain the validity of the ordinance and the white man to attack it, the very point involved in the controversy was the validity of that ordinance, and a member of the class discriminated against was before the court. The
42 fact that the latter took the position that the law was constitutional did not alter the fact that a member of the class discriminated against was before the court. In a recent decision by the United States Supreme Court (Middleton v. Texas Power and Light Co., 39 S. C. R. 227, 249 U. S. 152, an employee claimed that the Workmen's Compensation Law of Texas violated the Fourteenth Amendment for the reason that it excluded from its operation "domestic servants, farm laborers" etc. The employee who was not in the excepted classes brought an action for damages against the employer. The employer set up the provision of the Workmen's Compensation Act, providing an exclusive remedy for employees. There were two possible arguments: one, that the excepted class was discriminated against by being omitted from the act, and the other that the included employees were discriminated against by being included therein and thereby deprived of the usual legal remedies retained by the excepted class. In disposing of the matter the court held that the plaintiff could not be heard to complain that the omitted class was discriminated against by such omission; but that his claim that he was discriminated against by inclusion therein could be considered. Instead of claiming the benefit of the law he was seeking to escape its limitations, and as such was a person in a class discriminated against. The court said: "Of course plaintiff in error, not being an employee in any of the excepted classes, *would not be heard to assert any grievance they might have by reason of being excluded from the operation of the* act," (citing as authority for the statement the line of cases relied upon in Estabrook v. Industrial Accident Commission, supra, including Jeffrey Mfg. Co. v. Blagg, supra.) "But plaintiff in error sets up *a grievance* as a member of a class *to which the act is made to apply.*" (Italics ours.) Sure there is no suggestion here that the employer could set up the discrimination to escape liability under the act, for in no case was it discriminated against. The claim considered by the court was that
43 of a denial of the equal protection of the law, and is thus stated: "This is based in part upon the classification resulting from the provisions of the section just quoted, it being said that employees of the excepted classes are left entitled to certain privileges *which by the act are denied to employes of the non-excepted classes,* without reasonable basis for the distinction." (Italics ours.)

In a still later case, (Arizona Copper Co. v. Hammer, 39 Sup.

Court Reporter, 553; 249 U. S.,) in an action involving the constitutionality of the Arizona Employers Liability Act, the court again relied upon Jeffrey v. Blagg, supra, and Middleton v. Texas Light and Power Co., supra, as authority for the proposition there advanced, namely, "To the suggestion that the act now or hereafter may be extended by construction to non-hazardous occupations, it may be replied: First, that the occupations in which these actions arose were indisputably hazardous, hence plaintiffs in error have no standing to raise the question," citing the authorities above mentioned. The point involved was that the statute applied only to hazardous occupations. A decision of the supreme court of the United States, not cited by Mr. Justice Sloss in the opinion in Estabrook v. Industrial Accident Commission, is Erie Ry. Co. v. Williams, 233 U. S. 685. It was there held, quoting from the syllabus: "An employer cannot be heard to attack a state statute relating to payment of wages, on the ground that it denies to some of his employees the equal protection of the law because they are not within its protection." In that case the employer had as direct an interest in establishing the unconstitutionality of the law as he has in the case at bar, and yet it was held that he could not raise the question.

The decision by the supreme court of Massachusetts (New York Life Ins. Co. v. Hardison, 85 N. E. 410) is cited as authority for the proposition that where a jurisdictional question is involved the court will inquire into the constitutionality of the act, notwithstanding no member of the class discriminated against raises the question. That court held that they would consider whether they had jurisdiction of a writ of review from an insurance commissioner under a statute purporting to authorize them to accept jurisdiction where neither party to the action raised the question of jurisdiction. They properly held that they could not obtain jurisdiction by consent of the parties—a principle which has absolutely no application to the facts in the case at bar. We are here dealing with a question arising under the constitution of the United States, and are bound by the decisions of the supreme court of the United States. Under those decisions, as we have heretofore held in Estabrook v. Industrial Accident Commission, supra, the employer cannot complain that he is not made liable for injuries suffered by persons employed in California who are not residents of California, as well as for such residents. That is to say, he cannot complain that the law is more favorable to him than it should have been under the Fourteenth Amendment.

44

WILBUR, J.

45 Filed Jan. 22, 1920. B. Grant Taylor, Clerk, by Erb, Deputy.

Bank.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

v.

INDUSTRIAL ACCIDENT COMM. et al., Respondents.

By the Court:

Upon petition for rehearing the judgment of the court heretofore entered herein is hereby vacated and set aside and the cause ordered to a rehearing before the court, for the purpose of considering the following questions, viz:

1. To what extent may the state give extra territorial effect to its laws fixing the incidents of the relation of employer and employee when such relation has its inception within the state.

2. Assuming that the state has the power to give extra-territorial effect to its laws in such a case and assuming that a discrimination is made between residents and non-residents of the state by the provisions of the Workmen's Compensation Act extending the incidents of the relation of the employer and employee therein provided for to residents but not to non-residents when the relation has its inception within the state but the injury to the employee occurs elsewhere, is such descrimination contrary to the Federal constitution, and if so, does the Federal constitution have the effect
46 of rendering invalid that portion of the Workmen's Compensation Act providing for such extension in the case of residents, or (a point not made in the original briefs) does it have the effect of allowing this portion of the act to stand as effective and valid but of extending the incidents of the relation under similar circumstances to non-residents although there is no provision in the act for such extension to non-residents.

Further ordered that upon these matters the parties be and hereby are allowed to file briefs as follows: Petitioner 30 days to file first brief. Respondent 30 days to answer and Petitioner 15 days to reply, and that upon the filing of the last brief the matter be submitted.

Dated January 22d, 1920. (All concur.)

47 [Endorsed:] S. F. 9090. California Supreme Court. Quong Ham Wah Company, petitioner, vs. Ind. Acc. Comm., et al., respondents. Opinion.

48 Filed Oct. 5, 1920. B. Grant Taylor, Clerk, by Tyler, Deputy.

In the Supreme Court of the State of California.

Bank.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer Lissner, as Members of and Constituting said Commission, and Owe Ming and Alaska Packers Association, a Corporation, Respondents.

Certiorari to review the action of the Industrial Accident Commission in making an award pursuant to the terms of section 58 of the Workmen's Compensation, Insurance and Safety Act. (Stats. 1917, p. 870.)

Upon the first hearing in this court, the award was annulled upon the theory that said section 58 of the Workmen's Compensation Act granted to citizens of this state a privilege which it denied to non-citizens and was, therefore, violative of section 2 of Article IV of the federal Constitution. (Quong Ham Wah Company v. Industrial Accident Commission, 59 Cal. Dec. 18.) Upon petition for rehearing, the judgment of this court in the first instance was set aside and the cause set down for a hearing "for the purpose of consid-
49 ering the following questions:

"(1) To what extent may the state give extraterritorial effect to its laws fixing the incidents of the relation of employer and employee when such relation has its inception within the state?

"(2) Assuming that the state has the power to give extraterritorial effect to its laws in such a case and assuming that a discrimination is made between residents and non-residents of the state by the provisions of the Workmen's Compensation Act extending the incidents of the relation of the employer and employee therein provided for to residents but not to non-residents when the relation has its inception within the state but the injury to the employee occurs elsewhere, is such discrimination contrary to the Federal Constitution, and if so, does the Federal Constitution have the effect of rendering invalid that portion of the Workmen's Compensation Act providing for such extension in the case of residents, or, (a point not made in the original briefs), does it have the effect of allowing this portion of the act to stand as effective and valid but of extending the incidents of the relation under similar circumstances to non-residents although there is no provision in the act for such extension

to non-residents?" (Minutes of the court, 59 Cal. Dec. No. 3111).

In keeping with the order granting a rehearing, counsel for the respective parties briefed the case anew, painstakingly directing their efforts, in addition to a discussion of the points originally made, to an exhaustive exposition of the law appertaining to the subject matters designated in the order granting the rehearing. Therefore, aside from the recognition due the commendable efforts of counsel to facilitate the avowed purpose of the order, a discussion not only of the points originally made but also of those designated in the order would seem to be necessary to a decision of the case as now presented, even though the latter points were not necessarily involved in the case as prepared and presented in the first instance.

50 Section 58 of the Workmen's Compensation Act reads as follows: "The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act." (Stats. 1917, p. 870.)

Petitioner, the employer of the injured workman, attacks the validity of this statute on the ground that it violates section 2 of Article IV of the Constitution of the United Staes, which provides that "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." At the outset we are confronted again, as we were in the first instance, with the contention that the petitioner cannot be heard to question the constitutionality of the statute in cotroversy because it is not one of the class claimed to be discriminated against by the statute. The provision of the Workmen's Compensation Act now under attack is identical in phraseology with that considered by this court in Estabrook Company v. Ind. Acc. Com., 177 Cal. 767. In that case this court expressly declared that it was not required to pass upon the constitutional question sought to be raised and declined to discuss that question upon the merits because, as was held, "a contention that a statute denies equal rights and privileges by discriminating against persons and classes of persons may not be raised by one not belonging to the class alleged to be discriminated agninst." (Estabrook v. Ind. Acc. Com., supra.) Such, undoubtedly, is the general rule, but the Estabrook case is fundamentally wrong if it is to be taken as definitely deciding that there are no exceptions to the general rule enunciated therein and, if that be its purport, it should be flatly overruled, as was done by a majority of the court in the opinion rendered in the first instance in the instant case. (Quong Ham Wah Company v. Ind. Acc. Com., supra.) Apparently, however, the court in the

51 Estabrook case did no more than declare and apply the general rule that a statute purporting to make an unconstitutional discrimination between persons or classes of persons cannot be assailed on the ground of unconstitutionality by a person not belonging to the class discriminated against. This general rule, however, is not a hard and fast rule which must be arbitrarily and in-

flexibly applied to every situation involving the constitutionality of a statute, regardless of contingencies which may extend its operation beyond the confines of the classes which it was aimed to cover and control and which ultimately culminates in a grievance against persons not originally within the contemplation of the statute. In other words, the general rule under discussion and decision in the Etabrook case must necessarily be subject to certain well defined exceptions which, in so far as a perusal of the record in the Estabrook case shows, were not, in that case, pressed upon the attention of the court. Clearly the petitioner in the instant case has brought itself within the scope of one or more of the recognized exceptions to the general rule enunciated in the Estabrook case.

Thus, where no member of a class alleged to be unlawfully discriminated against by a statute is in a position to raise the constitutional question, then any person affected by the application of the statute can urge its unconstitutionality. In Greene v. State, 119 N. W. 6, the plaintiff in error was convicted under a statute making it a penal offense to commit "blackmail" against citizens or residents of the state of Nebraska. On appeal he urged that the statute was unconstitutional by reason of the fact that it operated to protect only citizens and residents of the state of Nebraska, and, therefore, unlawfully discriminated against the citizens and residents of all other states. In upholding this contention the court said: "We have not overlooked those cases which hold that a court will not listen to an injection made to the constitutionality of an act by a party whose right it does not affect, and who has, therefore, no interest in defeating it. Where the constitutional objection is that the penalties of the law are directed against a certain class without just reason for such discrimination, it is safe to leave the question of the constitutionality of such laws to be raised by the parties against whom the discrimination is made; and
52 such have been the facts in all the cases we have examined laying down this rule. It is inapplicable to a case where the vice of the law consists in an unwarranted discrimination between the individuals against whom the aggression thereby forbidden is committed. In such cases there is no way by which any person within the jurisdiction of the state denied the protection of its criminal law could bring the question before a court for its determination. If the legislature should enact a law amending our Criminal Code so that the crimes therein specified should be crimes only when committed against citizens or residents of the state, such an act would be absolutely void, but its invalidity could never be brought before the court by any person belonging to the classes thereby denied the protection of the criminal law. If we apply to such a law the rule that its constitutionality would only be considered when the objection was made by a party discriminated against, there could be no objection to its validity. When such a law is sought to be enforced against any person, whether belonging to the classes discriminated against or not, it should be declared void."

Respondents suggest that the reasoning of this case is based upon an inaccurate conception of the nature and effect of an unconsti-

tutionally discriminatory statute. Such statute is, they contend, not merely presumptively valid until it is set aside by the courts, but, unlike other statutes which offend against the constitution, it is actually and legally valid until set aside. Were this view of the nature of a discriminatory statute to be accepted, the doctrine of Greene v. State, supra, might be paraphrased thus, that such a law is in fact valid as to all classes except the class discriminated against, unless that class is precluded from making a complaint, in which event the law is invalid as to every class. Such a doctrine would assuredly be strange and indefensible. The truth of the matter is, however, that a discriminatory law is, equally with other laws offensive to the constitution, no law at all. (Buchanan v. Warley, 245 U. S. 60, 72.) Whatever validity it may be said to possess, it has such validity merely by virtue of the presumption of validity attaching to the acts of the legislative branch of the government. This presumption being rebuttable may be attacked by a litigant whenever it is material to his case unless he is prevented from doing so by some special exception. Such exceptions possess no peculiar sanctity and invest the law with no actual validity; they should naturally be confined by the limits of the reasons which occasioned their adoption and should give way to considerations of policy paramount to those reasons. Such an exception exists in the matter of attack upon the presumptive validity of a discriminatory statute and is to the effect that only a member of the class discriminated against can attack the presumption. The reason for the exception is to be found in the rule that the courts will consider questions of the constitutionality of statutes only when such consideration is a necessity in the determination of a real earnest and vital controversy between individuals. The exception, if literally accepted in its general form, is broader than the reason upon which it is based; but, independently of this consideration, it must yield to a policy paramount to the reason itself where no member of the class discriminated against can raise the question. The reason for the exception is in the nature of a rule developed for the regulation of the ultimate and supreme function of the courts to declare unconstitutional statutes to be void and of no effect; and such a regulatory rule must itself be subject to exception where it would otherwise operate to prevent altogether the exercise of this function, a function which it is the most solemn duty of the courts to exercise in a state governed under a written constitution which is the supreme law of the land. Where no member of a class descriminated against could ever attack the constitutionality of the discriminatory statute, the rule reserving to such persons the right to raise the constitutional question would totally prevent the exercise by the court of its function of passing upon that question and would place it in a position where it would for all time enforce rights and obligations created by an obviously void enactment. In such case any litigant to the determination of whose claim the constitutional question is fairly relevant should be permitted to raise the constitutional question. In the instant case, the Compensation Act does not give the commission jurisdic-

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tion over controversies arising out of injuries sustained abroad
54 by workmen who are not residents of California. It is clear, therefore, that a non-resident would have no standing before the commission or before any court to make a claim under the act. And, not having jurisdiction over his injury, neither the commission nor the courts could entertain or adjudicate his claim for compensation nor the constitutional question involved. Since, therefore, no member of the class discriminated against can ever raise the constitutional question, the petitioner is entitled to assail the constitutionality of the *state* since a determination of that question is clearly relevant in determining its rights herein.

Moreover, the fact that the constitutional rights of petitioner are directly affected by the statute here in question shows that the determination of the constitutionality of a discriminatory statute may be a necessity in the determination of a real and vital controversy between parties neither one of whom is a member of the class discriminated against, and that, therefore, the general rule that only members of the unfavored class may attack the enactment is broader than the reason upon which it is based. In this behalf respondents suggest that the cases indicate that the constitutionality of a discriminatory statute can be raised only by one injured by the discrimination and in no case by one whose constitutional or other rights are injured by the legislation. A careful analysis of the cases presented fails to support this theory. Moreover, the Supreme Court of the United States has announced and acted upon the contrary rule in Buchanan v. Warley, supra, a decision which is precisely in point in the instant case. In that case a vendor of land, a white man, sued to compel the vendee, a colored person, to receive and pay for a certain parcel of land which he had agreed to buy. Defend-
ant had judgment in the lower court solely because of the ef-
55 fect of an ordinance making it illegal for colored persons to reside upon the property in question. Plaintiff contended that the ordinance was unconstitutional for the reason that persons of color were unlawfully discriminated against. His right to assail the statute on the ground stated was questioned on the theory that he was not a member of the class discriminated against. The court clearly recognized, as it has done both in earlier and in subsequent cases, that in general one cannot assail the constitutionality of a statute in reliance upon the grievance of another, but it pointed out that while plaintiff had no grievance by reason of the discrimination, he had a grievance by reason of the legislation which by narrowing the market for his land deprived him of property, such deprivation being without due process of law in event the statute was for any reason unconstitutional. The court proceeded, therefore, to consider the merits of the constitutional question of discrimination. That case is precisely in point here for, in the instant case, while petitioner has no grievance by reason of any discrimination, it has a grievance by reason of the legislation which, by imposing upon it the liability of an insurer for certain classes of its employees, operates to deprive it of property, such deprivation being without due process of law in event the statute is for any reason unconstitutional. The constitu-

tional question of discrimination must therefore be discussed and decided.

Section 58 of the Workmen's Compensation, Insurance and Safety Act of 1917 restricts the right to claim the benefit of the act in the case of injuries suffered abroad to employees who are residents of California at the time of the injury. Since the act assumes that at the time of the injury the employee will be beyond the
56 boundaries of the state, the word "residents" must necessarily have been used to designate "persons domiciled in" California. Citizens of the United States domiciled in California are citizens of the state. (Cal. Political Code, sec. 51.) The benefits of the act are therefore extended solely to citizens of California and to aliens domiciled within the state. It follows that there is a direct discrimination against aliens not domiciled in California, with which we are not concerned, and against citizens of other states of the union which, if without legal justification, renders the statute unconstitutional. (Blake v. McClung, 172 U. S. 239, 247; 176 U. S. 56, 67.)

Respondents contend that the discrimination is justified upon the ground that the obligation imposed upon employers by the act is created as an incident to the status of master and servant and is, therefore, an obligation which can be created only by the law of the place of injury or by the law of the place of the servant's domicile. Were this reasoning sound it would follow that, in making the discrimination in section 58 of the act upon the basis of domicile, the legislature was merely recognizing a jurisdictional limit upon its power. Respondents' theory is based, however, upon a misconception of the nature of the statute and of the meaning of the term "extraterritorial" as that term is used in describing the operation of the statute.

The theory of territorial sovereignty has been too long established as a principle of international law to admit of question at this time. Rights created by one state may be recognized and enforced by another state at its pleasure, and likewise a status attached to a person by one state may be recognized by another state, into which that person may travel, at the pleasure of the latter state, but as law the man-
57 dates of the sovereign of a given state can have no effect beyond the territorial limits to which his rule is extended. When, therefore, it is said that a statute, such as the Workmen's Compensation Act, has an extraterritorial effect, it cannot mean that the law does, or attempts to, create rights abroad; it can only mean that an act occurring beyond the geographical limits of the state is recognized as the basis for the creation, or conditions for the enforcement, of a right created and enjoyed within this state. The power of an absolute sovereign to thus sanction the enforcement, within the territory subject to the jurisdiction of that sovereign, of rights based upon acts occurring abroad cannot be questioned upon the ground of any inherent deficiency. It is, therefore, a power which may be exercised by this state subject only to the restrictions of the state and federal constitutions. We may assume, in accordance with the contention of respondents, that, if the imposition of the obligation to compensate a servant not domiciled within the state

for injuries sustained without the geographical limits of the state were an attempt to create an obligation merely as an incident to a status, such legislation would conflict with well-defined legal principles. Whether such a law would amount to a mere regulation of status or to an expression of a positive duty the breach of which would be tantamount to a tort, it may be conceded that a law of that nature would not lie within the law-making province of a state wheih was neither the domicile of the servant nor the locus delicti. The effect and purpose of the act now under consideration, however, cannot be held to be the regulation of a status or imposition of a tort liability. It is true that the extension of the liability imposed by the act to acts occurring beyond the territorial limits of the state cannot be supported on the simple theory that the obligation so
58 imposed is, strictly speaking, purely a contractual liability, for the proposition that a compulsory statute is a contract has been definitely repudiated by this court. (North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1.) But the statute which is now before us assumes to extend its effect only to those cases where the contract of hire was made in this state. It is, therefore, not an attempt to create an obligation merely as an incident to a status but is, in form and substance, a genujne regulation of contracts subject to the sovereignty of the state. The liability which it imposes is, so to speak, in a class by itself, being neither strictly contractual nor delictual, and it may, for want of a better term, be described as quasi ex contractu. (Post v. Burger, 216 N. Y. 544, 550; 111 N. E. 351, Ann. Cas. 1916B 158; Berton v. Dry Dock Co., 219 Fed. 763.) The contract creates a relationship under the sanction of the law and the same law attaches as an incident thereto an obligation to compensate for injuries sustained abroad amounting to a sort of compulsory insurance. The legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state. (Angell on Recovery under Workmen's Compensation Law for Injuries Abroad, 31 Harvard Law Review, 16; Smith v. Heine Safety Boiler Co., 224 N. Y. 9; Jenkins v. T. Hogan & Sons, 163 N. Y. S. 707, 177 App. Div. 36.)

It is at once apparent that the legislature has equal power to provide for the creation of a compulsory obligation to compensate for injury suffered elsewhere as a regulation of contracts subject
59 to the sovereignty of the state whether the contracting employee be domiciled in this state or not. (Story on Conflict of Laws, 8th ed., p. 375; Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, 416.) Since, therefore, the right is created only in favor of citizens of the state and domiciled aliens, there is a direct discrimination against citizens of sister states.

The right of the legislature to impose reasonable regulations upon contracts subject to its sovereignty is unquestioned. When, however, the legislature attempts to provide that a substantial privilege shall be incident to certain contracts of employment when entered

into in this state by citizens of this state and that that privilege shall not be incident to identical contracts of employment when entered into in this state by citizens of other states of our union, the enactment is clearly in contravention of section 2 of article IV of the federal constitution. "Different states may have different policies, and the same state may have different policies at different times. But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to begin action in the courts are given to its own citizens and withheld from the citizens of other states is void, because in conflict with the supreme law of the land." (Chambers v. B. & O. R. Co., 117 U. S. 142.) It is true that many procedural discriminations between citizens and non-citizens have been upheld, but the rule applied in such situations has no application where a substantial substantive right is granted to citizens and under like circumstances is denied to citizens of other states. The statute here in question provides for the creation within this state of a right to accident insurance as an incident to certain contracts of employment in favor of citizens and opens the doors of its courts and commissions to citizens to enable them to enforce that right. This right is not accorded to citizens of other states. A privilege and
60 protection of the laws of a substantial nature is thereby accorded to citizens of this state and denied to citizens of other states. This is forbidden by the federal constitution. (Blake v. McClung, 172 U. S. 239.)

The constitution provides that "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." The provision appears without qualification. Its effect is not limited to those cases where its operation will not interfere with the internal policy of the state or with considerations which appear to affect the general welfare. Its mandate is absolute. It is true that a state may, in the valid exercise of its police power, limit the right of individuals to engage in certain professions or callings. Such regulations will be upheld even though their effect is indirectly to place non-citizens at a disadvantage, but the regulation must be inherently reasonable. (Ex parte Spinney, 10 Nev. 323; La Tourette v. McMaster, 39 Supreme Court Reporter, 160.) The principles applied in these cases cannot be invoked under the facts presented here. No reasonable ground can be found for the classification. Respondents make the contention that the court should uphold the right of the state to require compulsory compensation for its citizens alone, inasmuch as it is only citizens or their families who are likely to become a public charge upon the state as a result of injuries sustained abroad. The argument expresses a very excellent reason for requiring compulsory compensation for citizens, but it expresses no reason at all for denying the same right to citizens of other states. In the cases of which Ex parte Spinney and La Tourette v. McMaster, supra, are examples, restraints upon engaging in certain occu-
61 pations which bore more heavily upon citizens of other states were upheld upon the ground that the public good required that the occupations in question be opened only to those hav-

ing had business or professional experience within the state, the general safety and welfare necessitating the exclusion of others. In none of these cases was the rule sanctioned that a privilege could be granted to a citizen of one state and denied to citizens of other states for the reason that public policy did not require that the privilege be extended to the latter class of persons. Such a rule would be manifestly unsound and altogether in conflict with the constitutional provision here in question. No consideration of public policy requires that citizens of sister states be excluded from the benefits of the act here under consideration. The fact that considerations of public policy do not affirmatively require the extension of the benefits in question to citizens of sister states as strongly as they require their extension to citizens of this state furnishes absolutely no sound reason for the exclusion of the former and affords no reasonable basis for the discrimination.

It follows that the discrimination made in section 58 of the Workmen's Compensation Act contravenes the provisions of the federal constitution.

It is contended, however, and correctly, that the provisions of the federal constitution do not have the effect of rendering invalid that portion of the Workmen's Compensation Act providing for an extension of its benefits to residents who are injured abroad, but that it allows this portion of the act to stand as effective and valid and automatically and without regard to the intent of the state legislature extends the benefits created by the act to non-residents, or rather to such non-residents as are citizens of sister states. In support of this contention respondents rely upon Estate of Johnson, 139 Cal. 532. No good reason has been advanced for departing
62 from the doctrine therein declared as follows: "It will be noted not only that the constitutional provision is not restrictive, but that it is neither penal nor prohibitory. It nowhere intimates that an immunity conferred upon citizens of a state, because not in terms conferred upon citizens of sister states, shall therefore be void. Some force might be given to such an argument were the constitutional provision couched in appropriate language for the purpose. If, for example, it had said, 'No citizen of any state shall be granted any immunity not granted to every citizen of every state,' or had it begun its declaration by saying that 'It shall be unlawful to grant to citizens of any state any privilege or immunity not granted to citizens of every state,' it might then have been argued that a legislative attempt so to do would be declared violative of the express mandate of the constitution, and therefore void. But such is neither the scope, purpose, nor intent of the provision under consideration. It leaves to the state perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all the other states, by virtue of the constitutional enactment itself, the same rights, privileges, and immunities. So that, in every state law conferring immunities and privileges upon citizens, the constitutional clause under consideration, ex proprio vigore, becomes an express part of such statute. * * * The constitution itself becomes a part of the law. And this, in giving operation to that con-

stitutional provision, is what the courts have always done. They have never stricken down the immunity and the privilege which a state may have accorded to its own citizens. They have never annulled the exemption. They have always construed the law so as to relieve the citizens of other states, and place all upon equal
63 footing." This is in harmony with and declaratory of the principle laid down by the United States Supreme Court in the Slaughter-House Cases, 16 Wall. 36, 77, in the following words: "The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the states. * * * Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever rights, as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

The discrimination complained of in the instant case is to be found in the fact that the state statute under consideration confers upon the citizens of the state privileges and immunities which are not extended by the terms of the statute, either expressly or impliedly, to non-residents of the state and clearly the statute in question does not impose nor attempt to impose upon non-citizens of the state burdens or exactions not imposed upon citizens of the state. This difference is all important in controlling the construction and application of that provision of the federal constitution which declares that "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." For, where a state endeavors to place a burden upon non-citizens of the state which is not put upon citizens of the state, obviously the effect of the federal constitutional provision is to abort the endeavor of the state. On the other hand, however, where a state by statute endeavors to confer and does confer upon its citizens privileges and immunities not accorded by the statute to citizens of other states, the federal constitu-
64 tion operates, by the very force of its own language, to place citizens of other states in the same category and upon the same footing as citizens of the state in so far as concerns the right to have and enjoy the privileges and immunities conferred by the state upon its own citizens. In other words, the federal constitutional provision was designed for the protection of non-citizens and, therefore, in any given case calling for its application, the case and the application must be considered from the viewpoint and in the light of the welfare of the non-citizen. Viewed in this light, it is clear that, when a state statute imposes a burden on a non-citizen which is not imposed on the citizen of the state, the non-citizen may have relief from the burden thus imposed by invoking the provision of the federal constitution for the nullification of the discriminatory legislation. But, when a privilege is granted to a citizen and withheld from a non-citizen, the latter finds relief in the provision of the federal constitution which, by operation of law so to speak, extends the privilege to him. The obvious resulting difference in the opera-

tion and effect of the federal constitutional provision under discussion is the paramount point of the decision in the Estate of Johnson, supra, and it cannot be said that the extension to non-citizens of a statutory privilege granted only to citizens is judicial legislation, for clearly it is the federal constitution itself, and not the courts, which declares that, if citizens of a state are by statute granted privileges and immunities, non-citizens of the state shall likewise be "entitled" to them. The case of Spraigue v. Thompson, 118 U. S. 90, which enunciates the principle that the courts cannot eliminate a discriminatory statutory exception and thereby make the statute effective as to a class which the legislature did not have in mind, has application only to that class of cases where it is attempted
65 by the state to put a burden upon non-residents. That case has no application to the extension to non-residents of a privilege granted to residents and apparently has never been applied to the latter situation.

The very recent case of Travis v. Yale & Towne Mfg. Co., 40 Sup. Ct. Rep. 228, is relied upon in support of the contention that Estate of Johnson, supra, has been overruled by the Supreme Court of the United States. At first blush this case would seem to weaken the ruling of this court in Estate of Johnson. However, upon a close analysis of the Travis case, it will be found that it in no wise affects the doctrine of Estate of Johnson. The facts of the former case, substantially stated, were that the state of New York had imposed an income tax upon residents and non-residents but granted an exemption to residents of the state on the first one thousand dollars of their incomes, and further provided that every "withholding agent" (including employers) should deduct and withhold 2 per centum from all salaries, wages, etc., payable to non-residents, where the amount paid to any individual equalled or exceeded $1,000.00 in a year, and should pay the tax to the state comptroller. The court held, in affirmance of the judgment of the District Court of New York made in the first instance, that in granting to residents exemptions denied to non-residents the statute violated the provisions of section 2 of Article IV of the federal constitution, but a careful reading of the decision in that case reveals the fact that the court did not hold that the entire statutory scheme involved in that case was altogether void and nugatory. That is to say, the court did not declare that the statute was invalid in so far as it related to the imposition of a tax which, when freed and cleared of the attempted unwarranted discriminations operated uniformly upon resi-
66 dents and non-residents alike. True it is the court did not, in holding the attempted discrimination unwarranted, declare in terms that the exemptions granted to residents should by the conjunctive operation of the state statute and the fundamental law of the land be extended to non-residents, but in this behalf it is important to note that neither did the court decide that the statute was wholly invalid, that is to say, that residents and non-residents entirely escaped the burden of taxation because of the attempted discrimination. That it was not the purpose of the court to so declare is manifest, we think, by the decree rendered in the first instance by

the United States District Court of New York and affirmed by the Supreme Court of the United States.

That decree, although not set out in the opinion of the Supreme Court, is before us by the courtesy and consent of counsel for the respective parties in the instant case and may therefore, we take it, be rightly referred to in aid of the ascertainment of the scope and effect of the opinion of the Supreme Court. The decree mentioned does not, as counsel for the petitioner here contend, enjoin the state of New York from in any way collecting all or any part of the tax in question from non-residents. While it does enjoin the collection of the state tax from the complainants who were the "withholding agents" and the source of the income upon which the tax was levied, nevertheless it does not purport to enjoin the collection of the tax, with the discriminations eliminated, directly from resident and non-resident tax-payers. In short, the decree and its affirmance indicate that the court intended to do no more than declare that the discrimination in the granting of exemptions to residents and denying them to non-residents was, in the language of the supreme court itself, "an unwarranted *denial* to the citizens of Connecticut
67 and New Jersey of the privileges and immunities enjoyed by the citizens of New York." (Italics ours.) In other words, it was the denial to residents of other states of exemptions provided in the statute for residents of the state of New York which was declared to be invalidated by the provision of the federal constitution. Inasmuch as the court did not strike down the exemptions in so far as they applied to residents, it follows by necessary implication that, if the exemptions could not be denied to non-residents and were still extant as to residents, they must be available to non-residents. This conclusion is confirmed by a perusal of the opinion rendered in the first instance by the District Court, where it was carefully said that: "Nothing herein * * * is meant to be decided as to the validity of the statute so far as it relates to residents of the state of New York." (262 Fed. 576.) This can mean but one thing and that is that the act was valid as to residents and binding to the same extent, and only to the same extent, upon non-resident citizens of other states. While the opinion of the District Court cannot, of course, control the interpretation to be put upon the opinion of the Supreme Court, nevertheless it is illuminating and persuasive when considered in conjunction with the unqualified affirmance by the court of last resort of the decree of the lower court, despite the limitations which the latter Court explicitly put upon its judgment.

In any event, it cannot be said from anything contained either expressly or impliedly in the Travis decision that the court there went so far as to say that the act in its entirety was invalid and could not be enforced against residents of the state of New York.

Therefore it seems that the Travis case in no way contravenes
68 the rule and the reason for the rule enunciated in Estate of Johnson, supra, and, bound as this court is by the authority of the decision in that case until definitely overruled by the Supreme Court of the United States, it must apply the rule thereof to the instant case. It follows that, despite the invalidity of the discrimina-

tion, the statute iteelf is valid and may be made to apply uniformly to citizens of California and the citizens of the other states.

The award is affirmed.

LENNON, *J.*

We concur:
LAWLOR, *J.*
SLOANE, *J.*

69 S. F. No. 9090.

QUONG HAM WAH COMPANY

vs.

INDUSTRIAL ACCIDENT COMM.

Concurring Opinion.

I concur. I agree for the most part with the main opinion, but I am not in accord with its discussion of Estabrook Company v. Industrial Accident Commission, 177 Cal. 767, and I would prefer to state as briefly as possible my own views for concurring in the result reached.

The law under discussion extends the benefits of the Workmen's Compensation Act to citizens of this state, but not to others, who are injured abroad in the course of their employment, when the employment was originated by contract within the state. The general questions are as to the power of the state to pass such a statute, and, if its power is limited, the exact effect of the limitation upon the statute. These general questions resolve themselves into a series of more particular questions.

First. Has the state any power whatever to prescribe the incidents of the relation of employer and employee when the employment, that is, the actual rendition of services by the employee, is without the state? If the state has no such power, then the present law is wholly void. That a state has no power to prescribe what the law of another sovereignty shall be is of course plain. In this sense, and the true sense, a state can give no extra-territorial effect to its laws whatever. But the present law does not attempt to do this. What it attempts to do is to prescribe what shall be the incidents
70 within this state and according to its own law of a relation existing without its boundaries. So far as I know, an independent sovereign state has the power to prescribe what incidents it pleases shall attach within its own boundaries to any relation or to any set of facts or happenings, whether existing or occurring within or without its own boundaries. This is nothing more than saying that it has the power to determine what shall be the law within its boundaries. As to this, there is no one to say it nay as a matter of legal right. There is a decided practical limitation, that of the comity of nations, but this is not a limitation imposed by the superior law and binding upon the state, but is only a limitation by way of policy which the state may or may not observe.

The present law therefore does not transcend the power inherent in a wholly independent sovereign, and if the state of California has no right to prescribe what shall be the incidents within its borders of an employment abroad, it must be because of some limitation upon its sovereignty. The only limitations of this character are those imposed by the Federal Constitution upon it, as a constituent member of the Union, and, so far as I know, there is no general limitation in the Federal Constitution upon the power of a state to prescribe the incidents which shall attach within its boundaries and by its own laws to happenings or events occurring elsewhere. I conclude therefore that the state had the power to pass the law in question subject only to such special limitations as the Federal Constitution may contain.

Second. Is the law in conflict with any special limitation of the Federal Constitution? The only limitation of the Federal Constitution which it is claimed the law transcends is that which provides that a citizen of one state shall be entitled to have within
71 another state all the rights and privileges of citizens of the latter. Putting it in a negative way, this constitutional provision means that no state shall discriminate in favor of its own citizens as against those of other states. By the present law our state extends the benefits of its Workmen's Compensation Act to employees who are its own citizens and are injured abroad in an employment originating here, but not to the citizens of other states injured under similar circumstances. It is apparent at once that there is present just the discrimination which the Federal Constitution seeks to prevent, unless:

1. There is valid reason for making in this case a distinction between citizens of this state and those of other states, or

2. The state was without power to pass such a law effective as to citizens of other states.

As to the first of these alternatives, the only reason advanced to justify the distinction is that it is only in the case of injuries to citizens that they or their families are likely to become public charges. There might be some ground possibly for this contention if the primary object of the law were to prevent injured employees or their families from becoming public charges. But this is not its purpose except in a very remote degree, and since it is not, the argument entirely fails.

As to the second alternative, it seems to me clear enough from what has already been said that the state has the power to prescribe what shall be the incidents within its own borders and according to its own laws as to every one within it, citizens or non-citizens, of the relation of employer and employee, whether that relation be engaged in abroad or not. Certainly our attention has been called to
72 no provision of the Federal Constitution to the contrary, and in the absence of such provision I can see no reason why the inherent sovereign power of the state to make what laws it chooses respecting the rights and obligations of those within its jurisdiction

should be limited in this particular. The necessary conclusion, or rather the statement in a slightly different way of what has already been said, is that since so far as the objects of the act are concerned there is no reason for making a difference between citizens and non-citizens, and since it was within the power of the state to make the law apply to the latter as well as to the former, the act purports to make a discrimination which is not permitted by the Federal Constitution. This leads to the third question, which is:

Third. What under these circumstances is the effect of the provision of the constitution upon the act; Does it destroy it so that neither citizen nor non-citizen shall have its benefits, or does it operate to extend the benefits to non-citizens so that they as well as citizens are "entitled" to its privileges, and the unlawful discrimination is thus removed? Upon this point I agree thoroughly with both the discussion and the conclusion of the main opinion, and with the Estate of Johnson, 139 Cal. 531, to which it refers and upon which it relies. The constitutional provision is couched in the affirmative, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." When a state endeavors to place a burden upon non-citizens but not upon citizens, the necessary effect of the provision is to strike down the burden, to nullify the law which imposes it. But when the state endeavors to confer upon its citizens privileges or benefits not conferred on
73 others, the effect is just the opposite. The citizens of other states become "entitled" to those privileges or benefits, not by the operation of the statute, but by operation of a superior legislative enactment, the Federal Constitution, which declares in so many words that they shall be so entitled. The constitutional provision, in other words, is a declaration that whatever rights or privileges the citizens of a state may enjoy, the same rights or privileges shall likewise be extended to and be enjoyed by the citizens of other states, regardless of the desire of the state that they shall or shall not enjoy them. The result is that employees, both citizens of this state and those of other states, are entitled to the benefits of the act.

Fourth. In the answer just given to the third question lies, it seems to me, the true explanation of such decisions as those of Estabrook v. Industrial Accident Commission, supra. It is there said that an employer may not question the validity of such a law as the present because he does not come within the class discriminated against, towit, non-citizen employees. Now it cannot, in the very nature of things, be true that when it is attempted to charge a man, an employer for example, with liability under an invalid statute, a statute void because unconstitutional, he cannot question the validity of the statute upon which his liability depends simply because he is not one of the class discriminated against. If the law is a nullity and void, he of necessity is not liable and is entitled in all reason so to claim and show. If there are decisions to the contrary, nothing can be said of them except that they are fundamentally wrong. But the point in such instances as the Estabrook case is that the statute is

74 not void. It is perfectly valid. It is true it contravenes the Federal Constitution in attempting to withhold its benefits from non-citizens. But it is its attempt to withhold, not to confer, that alone contravenes the constitution and is herefore invalid and ineffective. The law stand as a valid enactment as to citizens, and the constitution operates to destroy its attempt to withhold its benefits from non-citizens and to extend those benefits to them. This being the true operation of the constitution upon the law which attempts to contravene it, it is plain that it is properly said in such a case that one not a member of the class discriminated against may not raise the question of constitutionality. It does not affect his liability in the slightest if the law is unconstitutional in the respect claimed, for the effect of the unconstitutionality is not to destroy the law but to extend it. As to him, the constitutional question is purely moot.

The recent decision of the Supreme Court of the United States in Travis v. Yale & Towne Co., referred to in the main opinion, is an exceedingly good illuseration of this. New York passed an income tax law allowing certain exemptions as to citizens, not allowed to others. Plainly, no citizen of New York could complain of this discrimination, because it was in his favor. The law was valid as to him. It was invalid as to non-citizens only, and as to them only to the extent of the discrimination. This much and nothing more was held in that case, and to this the decree was carefully limited, as the main opinion shows.

OLNEY, *J.*

75 *Concurring Opinion.*

I concur on the ground that the statute merely confers upon employees residing in this state the privilege of resorting to the Workmen's Compensation Act of this state to obtain compensation for injuries received while in the course of their employment, in all cases where the contract of employment was made in this state, whether the injury was received within or without this state, and that the provision of the constitution of the United States, ipso facto, carries this privilege to and confers it upon every citizen of any other state whose contract of employment is made in this state, and thus prevents the statute from being discriminatory in effect. It must be observed that the statute does not purport to withhold this privilege from citizens of other states; it is merely silent with regard to them. If it had contained a clause withholding it from others than residents, such clause would be void. But as it does not, the result is that the federal constitution prevents the statute from having the effect of withholding the privilege to citizens of other states. (Estate of Johnson, 139 Cal. 532.)

To the objection that the statute in effect withholds the privilege from persons who are neither citizens of any state nor residents of this state, the answer is that no provision of the federal or state constitution contains any limitation upon the power of the state legislature to make such discrimination, and that, unless it is so limited,

the power is plenary. (Const. Art. IV, sec. 1; Mitchell v. Winnek, 117 Cal. 525; Sheehan v. Scott, 145 Cal. 686; Mendenhall v. Gray, 167 Cal. 236.)

I am also satisfied that it is within the legislative power of the state, by appropriate laws, to attach to any personal relation created in this state, such as that of employer and employee, or master and servant, liabilities upon one party to such relation to the other, and
76 corresponding rights relating thereto, in addition to the mutual liabilities and rights arising from such relation at common law. The provision of the Workmen's Compensation Law extending its benefits to employees injured outside of this state where the contract of hire is made in this state, merely attaches to the relation created by such contract rights and liabilities additional to those arising under the common law, and it is therefore valid. This was decided by this court in Western Indemnity Co. v. Pillsbury, 170 Cal. 698-9, and Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, 415.

I agree with the conclusion that the petitioner has the right to attack the validity of section 58 of the act.

These propositions are in my opinion decisive of the case. Upon other matters stated in the opinion of Mr. Justice Lennon in his argument upon these questions I prefer to express no opinion.

SHAW, *J.*

I concur:

ANGELLOTTI, *C. J.*

77 *Concurring Opinion.*

I adhere to the views expressed in Estabrook Co. v. Industrial Accident Commission, 177 Cal. 767. I do not therefore agree with that portion of the opinion of Mr. Justice Lenon discussing that case, and the rule of law which it announces. I concur with what is said by Mr. Justice Lennon in reference to the jurisdiction of the State of California. I concur in that portion of his opinion in which he bases the constitutionality of the statute upon the principle announced in Estate of Johnson, supra. I agree with the majority of the court in holding that notwithstanding the language of the statute with reference to residents, by virtue of the federal constitution a nonresident of California, if a citizen of the United States, is entitled to the same remedies as a resident, and for that reason the Industrial Accident Commission had jurisdiction of the complaint of a resident of California and would also have jurisdiction of a similar complaint by a nonresident, and that there is therefore no such discrimination as is prohibited by the federal constitution.

WILBUR, *J.*

78 & 79

Copy.

In the Supreme Court of the State of California.

Bank.

San Francisco, No. 9090.

QUONG HAM WAH COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION, etc., et al. and OWE MING and ALASKA PACKERS ASSOCIATION (a Corp.), Respondents.

On Review from the Industrial Accident Commission of the State of California.

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged and decreed by the Court that the Award of the Industrial Accident Commission of the State of California be, and the same is hereby affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above cause on the 5th day of October, 1920, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 5th day of November, A. D. 1920.

[SEAL.]

B. GRANT TAYLOR,
Clerk.

By HARRIET P. TYLER,
Deputy.

80 In the Supreme Court of the State of California.

S. F., No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting Said Commission, Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Petition for Writ of Error and for Order Fixing Supersedeas Bond.

To the Honorable Frank M. Angellotti, Chief Justice of the Supreme Court of the State of California:

Quong Ham Wah Company, your petitioner and plaintiff in error, respectfully shows as follows:

I.

That on or about October 5, 1920, said Court rendered an opinion herein, in which opinion the Court affirmed an order which had theretofore been made by the Industrial Accident Commission of the State of California awarding compensation for personal injuries pursuant to Section 58 of the Workmen's Compensation, Insurance and Safety Act of 1917 of said State. (Stats. 1917.)

II.

That thereafter, at the expiration of thirty days from said October 5, 1920, said Court rendered judgment in accordance with said opinion, and said judgment thereupon became final.

III.

81 That said final judgment in said matter was and is rendered in the highest Court of said State of California in which a decision in said suit could be drawn.

IV.

That in said judgment and the proceedings had prior thereto in this cause certain errors were committed, to the prejudice of your petitioner, all of which will more in detail appear from the Assignment of Errors which is filed with this petition and made a part hereof.

V.

That as appears in the records and in the proceedings in said Court, there was drawn in question in said suit the validity of a

statute of the State of California, to-wit, Section 58 of the Workmen's Compensation, Insurance and Safety Act of 1917, and an authority exercised under said statute, on the ground that they violated Section 2 of Article IV of the Constitution of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the decision of said Court in said suit was in favor of the validity of said statute and of the authority so exercised.

VI.

That as further appears in the said records and proceedings, certain rights, privileges and immunities were claimed by your petitioner under Section 2 of Article IV of the Constitution of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the decision of said Court was against the rights, privileges and immunities so claimed.

Wherefore, your petitioner and plaintiff in error prays that a writ of error be allowed, returnable into the Supreme Court of the United States of America, and for the issuance of a citation to the above-named defendants in error, and that a transcript of the record, proceedings and papers upon which said judgment was rendered,
82 duly authenticated, be sent to the Supreme Court of the United States in compliance with the rules of said Court in such cases made and provided, and that, upon the giving of a bond in an amount to be determined by this Court, all further proceedings upon said judgment and award be stayed until the determination of this cause by said Supreme Court of the United States.

And your petitioner will ever pray.

WARREN GREGORY,
DELGER TROWBRIDGE,
Attorneys for Plaintiff in Error.

Presented to and received by me this 6th day of November, 1920.

P. M. ANGELLOTTI,
Chief Justice.

83 [Endorsed:] Original. S. F. No. 9990. Supreme Court of the State of California. Quong Ham Wah Company, Petitioner and Plaintiff in Error, vs. Industrial Accident Commission of the State of California et al., Defendants in Error. Petition for Writ of Error and for Order Fixing Supersedeas Bond. Filed Nov. 8, 1920, B. Grant Taylor, Clerk, By M., Deputy. Delger Trowbridge, Warren Gregory, Attorneys for Plff. in Error, Merchants Exchange Bldg., San Francisco, Cal.

84 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Assignment of Errors.

Now comes Quong Ham Wah Company, petitioner and plaintiff in error in the above-entitled cause, and complains of errors in the proceedings in the Supreme Court of the State of California in said cause and in the opinion and judgment rendered, made and entered therein in the above-entitled Court on the 4th day of November, 1920, and assigns the following as the errors complained of:

First. The Supreme Court of the State of California erred in its opinion in said cause, and in the judgment rendered therein, affirming the award of the Industrial Accident Commission of the State of California.

Second. Said Court erred in holding that Section 58 of the Workmen's Compensation, Insurance and Safety Act of 1917 of California was valid.

Third. Said Court erred in holding that although Section 58 of the said Workmen's Compensation, Insurance and Safety Act of 1917 discriminated between residents of different states and between citizens of different states, nevertheless it was valid.

Fourth. Said Court erred in holding that Section 58 of
85 the said Workmen's Compensation, Insurance and Safety Act of 1917 was valid and not violative of Section 2 of Article IV of the Constitution of the United States.

Fifth. Said Court erred in holding that Section 58 of the said Workmen's Compensation, Insurance and Safety Act of 1917 was not repugnant to the Fourteenth Amendment to the Constitution of the United States.

Sixth. Said Court erred in holding that Section 2 of Article IV of the Constitution of the United States, although contravened by Section 58 of the said Workmen's Compensation, Insurance and Safety Act of 1917, did not have the effect of rendering invalid that portion of said Section 58 of said Act providing for an extension of its benefits to residents and citizens of the State of California, and not to residents or citizens of other sister States.

Seventh. Said Court erred in holding that the privileges and benefits given to residents and citizens of the State of California by Section 58 of the said Workmen's Compensation, Insurance and Safety Act of 1917 are also given to residents and citizens of other States, although said Section 58 is silent as to non-residents and the citizens of sister states.

For which errors said Quong Ham Wah Company, petitioner and plaintiff in error herein, prays that the judgment of said Court be reversed and a judgment be entered for said petitioner and plaintiff in error, and for costs.

WARREN GREGORY,
DELGER TROWBRIDGE,
Attorneys for Plaintiff in Error.

Presented to me and received by me this 6th day of November, 1920.

F. M. ANGELLOTTI,
Chief Justice.

86 [Endorsed:] Original. S. F. No. 9090. Supreme Court of the State of California. Quong Ham Wah Company, Petitioner and Plaintiff in Error, vs. Industrial Accident Commission of the State of California et al., Defandants in Error. Assignment of Errors. Filed Nov. 8, 1920, B. Grant Taylor, Clerk, By M. Deputy. Delger Trowbridge, Warren Gregory, Attorneys for Pltff. in Error, Merchants Exchange Bldg., San Francisco, Cal.

87 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Order Allowing Writ of Error and Fixing Supersedeas and Cost Bond.

Upon the filing of the petition of the above-named Quong Ham Wah Company for a writ of error, together with Assignment of Errors, and upon motion of counsel for plaintiff in error:

It is ordered that a writ of error, as prayed for in said petition, be, and it is hereby, allowed to said Quong Ham Wah Company to have reviewed by the Supreme Court of the United States the judgment heretofore entered in the above-entitled cause.

It is further ordered that the amount of the bond to be filed in

this Court by said plaintiff in error in connection with the writ of error prayed for be, and is hereby, fixed in the sum of One Thousand (1000) dollars, and that upon the filing and approval of said bond in said amount, all further proceedings in said cause in said Supreme Court of the State of California, and in and before the Industrial Accident Commission of the State of California, shall be suspended and stayed until the determination of such writ of error by the Supreme Court of the United States.

Dated November 6th, 1920.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

88 [Endorsed:] S. F. No. 9090. Supreme Court of the State of California. Quong Ham Wah Company, petitioner and plaintiff in error, vs. Industrial Accident Commission of the State of California, et al., defendants in error. Order allowing writ of error and fixing supersedeas and cost bond. Filed Nov. 8, 1920. B. Grant Taylor, clerk, by M., Deputy. Delgar Trowbridge, Warren Gregory, Attorneys for Pltff. in Error, Merchants Exchange Bldg., San Francisco, Cal.

89 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission, Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Bond on Writ of Error and Staying Execution.

Know all men by these presents:

That we, Quong Ham Wah Company, as principal, and William Timson, whose address is 1050 Green Street, San Francisco, California, and A. K. Tichenor, whose address is 1717 Dayton Street, Alameda, California, as sureties, are held and firmly bound unto the defendants in error above-named, in the sum of One Thousand (1,000) Dollars, to be paid unto the said defendants in error or their successors and assigns, for the payment of which sum, well and truly to be made, we bind ourselves and each of us, our and each of our respective heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of November, 1920.

Whereas, Quong Ham Wah Company, plaintiff in error above-named, has sued out a writ of error to the Supreme Court of the

United States of America to reverse the judgment in the above-entitled cause rendered by the Supreme Court of the State of
90 California; and

Whereas, said plaintiff in error desires during the prosecution of such writ, to stay the execution of said judgment of the Supreme Court of the State of California:

Now, therefore, the condition of this obligation is such that if Quong Ham Wah Company, plaintiff in error above named, shall prosecute said writ of error to effect, and pay all costs and damages which may be awarded against it as such plaintiff in error if it fail to make good its plea, and shall abide by and perform whatever order or decree may be rendered against it in this cause by the Supreme Court of the United States of America, or on the mandate of said court by the said Supreme Court of the State of California, then this obligation to be void; otherwise to be and remain in full force and effect.

QUONG HAM WAH COMPANY,
By LEM SEN,
Manager (As Principal).
WILLIAM TIMSON, [SEAL.]
A. K. TICHENOR, [SEAL.]
(As Sureties.)

91 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Wm. Timson, one of the sureties whose names are subscribed to the above undertaking, being duly sworn says that he is a resident and householder in the said City and County of San Francisco, State of California, and is worth the sum in said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

WILLIAM TIMSON.

Subscribed and sworn to before me this 6th day of November, 1920.

[Notarial Seal.] CHARLES EDELMAN,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires April 7, 1922.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

A. K. Tichenor, one of the sureties whose names are subscribed to the above undertaking, being duly sworn says that he is a resident and householder in the City of Alameda, County of Alameda, State of California, and is worth the sum in said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

A. K. TICHENOR.

Subscribed and sworn to before me this 6th day of November, 1920.

[Notarial Seal.] CHARLES EDELMAN,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires April 7, 1922.

The foregoing bond is hereby allowed and approved this 6th day of November, 1920, and the same may operate as a cost bond and a stay of execution in said cause pending the prosecution of said writ of error.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

92 [Endorsed:] S. F. No. 9090. Supreme Court of the State of California. Quong Ham Wah Company, petitioner and plaintiff in error, vs. Industrial Accident Commission of the State of California et al., defendants in error. Bond on writ of error and staying execution. Filed Nov. 8, 1920. B. Grant Taylor, clerk, by M., Deputy. Delger Trowbridge, Warren Gregory, Attorneys for Pltff. in Error, Merchants Exchange Bldg., San Francisco, Cal.

93 In the Supreme Court of the United States of America.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission; Owe Ming, and Alaska Packers Association, a Corporation, Defendantts in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in that certain matter of the petition of Quong Ham Wah Company, one of the respondents, for writ of review against the Industrial Accident Commission of the State of California, and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as members of and constituting said Commission, Owe Ming, and Alaska Packers Asso-

ciation, a corporation, San Francisco Number 9090 in the records of said Court, wherein was drawn in question the validity of a statute or an authority exercised under said statute, to-wit, a statute of the State of California, on the ground of its being repugnant to the constitution and laws of the United States, and the de-
94 cision was in favor of its validity, a manifest error hath happened to the great damage of the said respondent, Quong Ham Wah Company, as by its complaint appears, we being willing that error, if any hath been, should be corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be given therein, that, under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, on the 5th day of January, 1921, in the said Supreme Court of the United States to be then and there held; that the records and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 6th day of November, 1920.

Done in the City and County of San Francisco, State of California, with the seal of the Southern Division of the District Court of the United States for the Northern District of California attached.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of the Southern Division of the United States District Court in and for the Northern District of California,
By J. A. SCHAERTZER,
Deputy Clerk.

Allowed this 6th day of November, 1920.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

95 [Endorsed:] Original. In the Supreme Court of the United States of America. Quong Ham Wah Company, petitioner and plaintiff in error, vs. Industrial Accident Commission of the State of California et al., defendants in error. Writ of Error. Filed Nov. 8, 1920. B. Grant Taylor, clerk, by M., deputy. Delger Trowbridge, Warren Gregory, attorneys for pliff. in error, Merchants Exchange Bldg., San Francisco, Cal.

96 In the Supreme Court of the State of California.

S. F. No. 9090.

QUONG HAM WAH COMPANY, Petitioner and Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as Members of and Constituting said Commission; Owe Ming, and Alaska Packers Association, a Corporation, Defendants in Error.

Citation.

The President of the United States of America to the Industrial Accident Commission of the State of California and A. J. Pillsbury, Will J. French and Meyer S. Lissner, as members of and constituting said Commission; Owe Ming, and Alaska Packers Association, a corporation, defendants in error in the above-entitled cause:

You and each of you are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, District of Columbia, on the 5th day of January, 1921, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of California, wherein Quong Ham Wah Company is plaintiff in error, and you and each of you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness the Chief Justice of the Supreme Court of the State of California, this 6th day of November, 1920.

F. M. ANGELLOTTI,
Chief Justice.

Attest:

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.
By W. R. MACKRILLE,
Chief Deputy.

Due service and receipt of a copy of the within Citation and receipt of copy of Writ of Error and Order allowing Writ of Error mentioned therein admitted this 8th day of November, 1920.

A. E. GRAUPNER,
WARREN H. PILLSBURY,
Attorneys for Defendants in Error Industrial Accident Commission of the State of California and the Members Thereof.
JOHN L. McNAB,
BYRON COLEMAN,
Attorneys for Defendant in Error Owe Ming.
CHICKERING & GREGORY,
Attorneys for Defendant in Error Alaska Packers Association, a Corp.

97 [Endorsed: Original. S. F. No. 9090. Supreme Court of the State of California. Quong Ham Wah Company, petitioner and plaintiff in error, vs. Industrial Accident Commission of the State of California et al., defendants in error. Citation. Filed Nov. 8, 1920. B. Grant Taylor, clerk, by M., deputy. Delger Trowbridge, Warren Gregory, attorneys for pltff. in error, Merchants Exchange Bldg., San Francisco, Cal.

98 STATE OF CALIFORNIA, *ss:*

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, hereby certify that the foregoing transcript constitutes a full, true and correct copy of the proceedings had and orders entered in the above-entitled cause as set forth therein, as the same appear on file and of record in this office, with the exception of the Petition for a Writ of Error, the Assignment of Errors, the Writ of Error, and the Citation, which documents are herewith attached and which are the original Petition for a Writ of Error, original Assignments, original Writ, and original Citation.

The foregoing constitutes the entire transcript in the cause.

Witness my hand and the official seal of said Court, the 17th day of November, A. D. 1920.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,
By I. ERB,
Deputy,

Endorsed on cover: File No. 27,995. California Supreme Court. Term No. 638. Quong Ham Wah Company, plaintiff in error, vs. Industrial Accident Commission of the State of California et al. Filed December 6th, 1920. File No. 27,995.

FILED

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

QUONG HAM WAH COMPANY,
Plaintiff in Error,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, and A. J. PILLSBURY, WILL J. FRENCH and MEYER LISSNER, as members of and constituting said Commission, OWE MING, and ALASKA PACKERS ASSOCIATION, a corporation,
Defendants in Error.

MOTION FOR ADVANCEMENT OF CAUSE.

Now come plaintiff in error and defendant in error Industrial Accident Commission of the State of California, and respectfully move this Honorable Court for the advancement of this cause for early presentation and decision. This motion is made for the reason that this cause involves important questions of constitutional law affecting a large number of persons outside of the parties to the present case, and affecting the public interest.